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HUMAN RIGHTS OF INDIGENOUS PEOPLES

Report of the seminar on the draft principles and guidelines for the protection of the heritage of indigenous people

(Geneva, 28 February - 1 March 2000)

Chairperson-Rapporteur: Mrs. Erica-Irene Daes

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CONTENTS

	Paragraphs	Page
Introduction	1 - 3	3
I. ORGANIZATION OF WORK	4 - 8	3
II. GENERAL COMMENTS	9 - 14	5
III. CONSIDERATION OF THE DRAFT PRINCIPLES	15 - 30	6
IV. CONSIDERATION OF THE GUIDELINES	31 - 41	8
V. CONCLUSIONS AND RECOMMENDATIONS	42 - 49	10
Annex I: Revised text of the draft principles and guidelines for the protection of the heritage of indigenous people		12
Annex II: List of participants		19

Introduction

1 By its resolution 1997/13, the Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on the Prevention of Discrimination and Protection of Minorities) requested the United Nations High Commissioner for Human Rights to convene, prior to the sixteenth session of the Working Group on Indigenous Populations and the fiftieth session of the Sub-Commission, a seminar on the draft principles and guidelines for the protection of the heritage of indigenous peoples elaborated by the Special Rapporteur, Mrs. Erica-Irene A. Daes, with her participation and the participation of representatives of Governments, United Nations bodies and organizations, specialized agencies, organizations of indigenous peoples and competent indigenous persons.

2 In its decision 1998/103 the Commission on Human Rights endorsed the recommendation of the Sub-Commission. This decision was subsequently endorsed by the Economic, Social and Cultural Council (decision 1998/277).

3 The seminar on the draft principles and guidelines for the protection of the heritage of indigenous people was held at the United Nations Office at Geneva, from 28 February to 1 March 2000. More than 45 persons attended the workshop. The list of participants is annexed to this report.

I. ORGANIZATION OF WORK

Opening of the workshop

4 A representative of the Office of the High Commissioner for Human Rights, Ms. Stefanie Grant, opening the seminar, referred to the draft principles and guidelines elaborated by Mrs. Daes (E/CN.4/Sub.2/1995/26, annex) as the distillation and outcome of the study undertaken by the Special Rapporteur in 1993 on this issue. She emphasized that in the era of economic globalization, the protection of the heritage of indigenous peoples is taking on an even greater significance. In this context, she said that the High Commissioner had a particular interest in the protection of the heritage of indigenous peoples and noted that the International Decade of the World's Indigenous People was one of the priorities of her Office.

Election of Chairperson-Rapporteur

5 By common consent, the Special Rapporteur, Mrs. Erica-Irene A. Daes, was elected Chairperson-Rapporteur of the seminar. In her opening remarks, Mrs. Daes explained the background to her study entitled "Protection of the heritage of indigenous people" and the draft principles and guidelines annexed to the final report and described what she considered to be the purpose of the seminar. She stressed the importance for the participants of sharing their knowledge and experience on this topic. The protection of indigenous peoples' control over their knowledge was essential for their survival as well as that of humankind as a whole. Effective protection must, however, be holistic in its approach. It must result from a comprehensive and constructive dialogue between indigenous peoples and other persons representing labour, trade, developmental, cultural and scientific interests. The draft principles and guidelines were therefore addressed, not only to Governments, intergovernmental

organizations and non-governmental organizations but also to business, the media, academics and others. The main and urgent task of the international community is to harmonize its activities with the protection of the heritage of indigenous people.

Adoption of the agenda

6. The seminar approved the following agenda:

1. Election of officers.

2. Adoption of the agenda.

3. Organization of work.

4. Comments relating to the draft principles and guidelines for the protection of the heritage of indigenous people on an article-by-article basis.

5. Consideration of the draft principles and guidelines.

6. Conclusions and recommendations.

Documentation

7. The seminar had before it the following documents:

Provisional agenda (HR/GVA/SEM.1/IP/2000/1);

Protection of the Heritage of Indigenous People, by Erica-Irene A. Daes, Human Rights Study Series, No. 10, 1977;

Draft principles and guidelines for the protection of the heritage of indigenous people by the Special Rapporteur Mrs. Erica-Irene A. Daes (E/CN.4/Sub.2/1995/26, annex);

Report of the technical meeting on the protection of the heritage of indigenous people, Geneva, 6-7 March 1997 (E/CN.4/Sub.2/1997/15);

Document submitted by Mr. Carlos Zolla of the National Institute for the Indigenous of Mexico (HR/GVA/SEM.1/IP/2000/CRP.1).

Organization of work

8. In order to speed up the work during the seminar, the Chairperson-Rapporteur suggested establishing two drafting groups - one for the consideration of the principles and one for the consideration of the guidelines. Two facilitators were appointed for the drafting groups: Mr. Siegfried Wiessner (St. Thomas University, United States of America) for the former and Ms. Marie Battiste (University of Saskatchewan, Canada) for the latter.

II. GENERAL COMMENTS

9. Ms. Roy expressed the view that there were many similarities between the draft principles and guidelines for the protection of the heritage of indigenous people and the provisions of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. In this respect, reference was made to the provisions of the Convention regarding the adoption of special measures to protect the heritage of indigenous peoples (art. 4), to the provisions dealing with education and means of communication (arts. 26-31), to articles 28 and 29 relating to children, and to the collective aspects of the Convention (art. 14). The representative also stressed that the two concepts of consultation and participation in the draft principles and guidelines were of great importance.

10. The representative of Canada noted that much work had been done internationally within the context of article 8 j of the Convention on Biological Diversity. Within Canada these issues were being discussed between the Government and indigenous communities within the framework of self-government negotiations.

11. Three governmental representatives said that they understood the seminar to be part of a consultative process. Their participation in no way indicated their Governments' consent to the guidelines and principles or to what would be generated as a result of the meeting. They would participate in the seminar on an informal basis, and were looking forward to receiving and reviewing the product of the seminar and to comments from indigenous peoples in their respective countries.

12. Mr. Zolla noted that there were two possible concepts of what constituted "heritage". On the one hand, heritage could be understood in terms of artistic heritage, on the other hand, heritage could be defined more broadly to include a reference to territory and the social organization of indigenous peoples. He emphasized that it was important to reach consensus on the rights and obligations of indigenous peoples and Governments towards indigenous peoples' heritage. At present indigenous peoples were vulnerable and in order to protect their heritage effectively it was essential for them to have control over their heritage through, for example, the transfer of new technologies.

13. Mr. Sambuc, a consultant on intellectual property rights, referred to the work of the World Intellectual Property Organization (WIPO) as it related to the protection of the heritage of indigenous peoples. He noted that the work of WIPO in this area went beyond the draft principles and guidelines as it focused on traditional knowledge generally. In this way it included knowledge of communities other than indigenous communities. On another level, many aspects of the draft principles and guidelines were outside the scope of WIPO's mandate. He also referred to a special programme set up by WIPO that was looking at areas related to the protection of indigenous peoples' heritage.

14. Mr. Planche said his organization had noted with great interest the final report on the protection of the heritage of indigenous peoples. He said that there were many issues of particular concern to UNESCO, and pointed to the constitutional mandate of the organization to contribute to the protection of the cultural heritage of humanity. The spirit of the draft principles

and guidelines were very much in line with UNESCO's interest in the preservation of cultural diversity. He drew the attention of the seminar to some points that needed reflection and some mechanisms which already existed and had not been mentioned in the document.

III. CONSIDERATION OF THE DRAFT PRINCIPLES

15. Mr. Wiessner, introduced the discussion on the draft principles and called attention to the critical need to develop effective principles and modes of legal protection of indigenous peoples' heritage.

16. Participants considered the above draft as an important working paper constituting a good basis for further protection of indigenous rights. Some specific comments were made on the draft principles.

17. With regard to principle 1, it was suggested that the statement on diversity be broadened by omitting the qualifier "cultural", thereby stressing the link between diversity and the sustainability of the human species as a whole.

18. Further discussion ensued on whether to retain in principle 2 a "duty" of indigenous peoples to maintain and develop their culture. Indigenous representatives maintained that they clearly knew they had a duty and that the draft principles did not need to remind them of it.

19. In response to a question from a governmental representative, the Chairperson-Rapporteur explained that principle 2 did not use the principle of self-determination in the same broad sense as in article 3 of the draft United Nations declaration on the rights of indigenous peoples.

20. Various statements were made regarding the terms "culture, arts and sciences" in principle 3. The representative of Canada suggested using the language of the Convention on Biological Diversity which speaks of "traditional knowledge, innovations and practices". Mr. Sambuc said that the Convention on Biological Diversity focused on different issues and was guided by possibly different policies than the working paper under discussion, which employed a broader definition of "heritage". Some participants suggested replacing the term "culture, arts and sciences" with the term "heritage". It was also pointed out that indigenous peoples were the "source" of the culture, not just the carriers.

21. Mr. Sambuc questioned the focus on "international" recognition in principle 4, since problems were often of a domestic nature. A further suggestion was made by a participant that indigenous peoples' customs, rules and practices, should not only be recognized and respected, but also valued. Mr. Chennells was, however, of the opinion that "respect" included also the "valuing" of them.

22. Some participants stressed the importance of retaining the language "collective, permanent and inalienable ownership" in principle 5. Although Western legal systems were not based on collective ownership, they recognized and applied the legal notion. It was suggested, however, to provide for the atypical case where the heritage of an indigenous people might not be held collectively. It was also proposed that indigenous peoples' ownership and custody

should be "collective, permanent and inalienable" or, alternatively "as prescribed by the customs, rules and practices of each people". Mr. Sambuc expressed the view that a broader type of protection for indigenous peoples' heritage was afforded by not specifying the nature of the heritage.

23. Some participants commented on the wording "must continue to be" since it appeared to impose obligations on indigenous peoples. Instead, the formulation "should be" was suggested.

24. The representative of Mexico drew attention to the potential conflict between elements of the heritage of indigenous peoples and elements of national heritage.

25. With regard to draft principle 7, it was suggested to replace "to protect" with "to preserve" at the beginning of the sentence. However, some participants objected, since the term "preserve" by itself might not imply protection. Others said that a combined version, "to protect and preserve", should be used. Further, it was suggested that the words "wherever necessary" be deleted since they might imply that the restoration of indigenous languages was not always necessary. Other participants commented that the opposite might in fact be the case and suggested to replace "wherever necessary" with "where indigenous languages may be eroded or lost". Some participants suggested to use "wherever applicable" instead of "wherever necessary". Attention was also drawn to the fact that indigenous languages, besides being lost or eroded, were sometimes forbidden.

26. It was stated that the word "control" in several principles was a concept with a broad scope and could have different meanings. In this context, some governmental representatives expressed their hesitation with respect to the word "control" in principle 8, and suggested "consent" in its stead. Some indigenous participants, however, insisted on retaining the term, since it was seen as affording stronger protection. As with respect to draft principle 6, the word "control" was seen to be a relatively elastic legal concept, lending itself to more detailed elaboration and implementation.

27. With regard to draft principle 8, comments were made regarding the nature of the research undertaken within indigenous peoples' territories. It was said that the purpose of the provision was to avoid any intrusion, not to prevent intellectual research. Some participants stated that indigenous peoples should be involved in, aware of, and participate in the research process. Some participants stated that indigenous peoples should have as much control over research on their heritage as they could attain. At a minimum, they should give their free consent to any research concerning them. It was also stated that indigenous peoples were perfectly capable of conducting their own research. Finally, it was suggested that the word "control" be retained and linked to "all research conducted on their people and any aspect of their heritage".

28. It was suggested that in principle 9, the term "prior" should be added before the phrase "free and informed consent". Controversy regarding this principle focused on the term "traditional owners". There was disagreement over whether "traditional owners" should be replaced by "owners". In any event, representatives of indigenous organizations insisted that the word "traditional" should be retained. They said that the word "owners" could mean anything and could refer to any Government, institution, organization or individual. Other participants

pointed out that one of the guidelines (13) would still define "owners" in accordance with indigenous peoples' own customs, laws and practices, referring to "the whole people, a particular family or clan, an association or community, or individuals who have been specially taught or initiated to be its custodians"

29. Some concern was expressed about the concept of "revocability" in principle 10. It was suggested that the provision be deleted. Discussion ensued on the issue of changing the reference to indigenous peoples as "primary beneficiaries of commercial application" to "equitable beneficiaries". The discussion focused on the legal and commercial interpretations of the terms "primary" and "equitable". As an alternative, "principal beneficiaries" was brought forward.

30. Throughout the discussion, it was felt necessary to add a provision that would allow for the recognition and support of national and international legal protections that parallel or exceed the protection assured indigenous peoples under the draft principles and guidelines. Reference was made to article 44 of the draft United Nations declaration on the rights of indigenous peoples. It was felt necessary to add a principle ensuring that the draft principles and guidelines do not diminish or extinguish existing or future rights. Similarly, concern was expressed that the principles did not necessarily reflect women's rights and that this would implicitly raise the issue of the relationship of a people's cultural rights vis-à-vis individual human rights. This could be addressed by adding the statement that nothing in the declaration "may ... be construed as violating universal standards of human rights".

IV. CONSIDERATION OF THE GUIDELINES

31. Ms. Battiste introduced the discussion on the draft guidelines. She noted that the guidelines had been extensively reviewed with representatives of Governments, indigenous peoples and other concerned organizations. The guidelines should therefore reflect a common understanding that was inclusive of the opinions of all actors.

32. The possibility of including references to specific programmes of intergovernmental and governmental organizations relating to issues raised in the principles and guidelines was discussed. In that regard Mr. Planche drew the attention of the seminar to the Intergovernmental Committee for the Promotion of the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. On the one hand, some participants believed that it might be useful to highlight these mandates and programmes in the document, especially as a means of informing indigenous peoples of relevant programmes. Some participants, on the other hand, thought that identification with any specific programme might effectively limit the scope of the draft principles and guidelines, especially in the case of programmes being cut or mandates being amended. Many participants believed that the language of the document should be broad and inclusive.

33. With regard to the recovery and restitution of heritage, the representative of Mexico stated that much of the heritage of the pre-Hispanic period was scattered throughout the world and that it would be difficult to recover this material. Therefore, it would be virtually impossible for her country to abide by the draft principles and guidelines. The representative of Canada said that the guidelines were unclear, as they did not deal with competing claims. Some indigenous

participants emphasized the importance of creating mechanisms within countries for indigenous peoples to be able to recover their heritage. Another indigenous participant raised the question of who could be a claimant for the recovery of material when a people had disappeared.

34. While some discussion ensued in an attempt to abbreviate or simplify the draft principles and guidelines, indigenous representatives held that the working paper under consideration, in its longer form, had the effect of raising the consciousness of various actors and players involved and thus was valuable to them in their countries.

35. The seminar agreed that the definition of "heritage" should be broad and inclusive. As elements of heritage were identified in guideline 12, the broadest language should be used. Mr. Wendland suggested that the broader term "creations" should replace the legally specific term "works". Some participants noted the importance of including "language" and "sites" as elements of indigenous peoples' heritage within the definition. It was also pointed out by some participants that much of indigenous heritage remained to be discovered, sometimes in other countries where it might have been taken. It was acknowledged that "creations" in the future and/or rediscovered in the future needed to be added.

36. The importance of ensuring that the language of the document was consistent with future discussion and consent and consensus among indigenous peoples and nation States was raised. For example, guideline 37 concerning the moratorium on the Human Genome Diversity Project raised the practical problem of what criteria should be used to support such a proposal. The guidelines should not make proposals that indigenous peoples could not implement or for which they might not have the appropriate information to consider.

37. With regard to the principle relating to research conducted on flora and fauna, Mr. Wendland explained that property rights on flora and fauna in their natural form did not exist. It was the knowledge associated with flora and fauna that could be subject to intellectual property rights. Therefore, flora and fauna in their natural state did not form part of heritage.

38. Some participants noted that some terms in English appeared to have a different effect when translated into other languages, in particular Spanish.

39. A participant suggested that there was a potential inconsistency between the guidelines relating to the sharing of elements of indigenous heritage and the principle that indigenous peoples' ownership and custody of their heritage should be "collective, permanent and inalienable". Other participants said that while indigenous peoples held their heritage as inalienable, heritage could be shared under certain circumstances as each indigenous people had its laws and its own core values of generosity and reciprocity which informed their own customs, traditions and expectations of benefit.

40. Mr. Sambuc thought the guidelines on international organizations could be more concise. He also suggested that they should reflect the following four principles, which were important coherence of international action in the field of the protection of the heritage of indigenous people, the raising of awareness about the issue, funding, and the participation of indigenous peoples in negotiations and discussions on the protection of their heritage.

41. An indigenous representative read out a joint statement on behalf of the National Indigenous Working Group, the Foundation for Aboriginal and Islander Research Action, and the National Aboriginal and Torres Strait Islander Legal Services Secretariat. He noted that indigenous peoples were often told that they must compromise their rights or change their cultural practices in order to gain legal protection of their heritage. He believed that the principles and guidelines discussed went a long way towards the recognition that indigenous peoples must have the right to have education systems that pass their heritage on to future generations, the right to decide what heritage is available for academic or commercial use, and the right to link heritage to geographical areas of land, sea and territory. Finally, heritage laws must be based on simple certification that indigenous peoples as a community have recognized their heritage as continuing.

V. CONCLUSIONS AND RECOMMENDATIONS

42. The participants welcomed the opportunity to further elaborate the draft principles and guidelines on the protection of the heritage of indigenous peoples prepared by the Special Rapporteur, Erica-Irene A. Daes.

43. The participants expressed their gratitude to the High Commissioner for Human Rights, Mary Robinson, for her personal concern and assistance with the organization of the seminar and underlined the importance of holding consultations among indigenous and governmental experts, representatives of United Nations organizations and specialized agencies as well as scholars and academics on this issue.

44. The participants thanked and expressed their deep appreciation to the Special Rapporteur for her work and recommended that she consider the proposals, amendments and other comments made during the course of the seminar and revise the principles and guidelines accordingly and should annex them to the report of the seminar to be submitted to the Sub-Commission on the Promotion and Protection of Human Rights at its next session.

45. The participants expressed warm thanks and appreciation to the two chairpersons of the drafting groups on principles and guidelines, Mr. Wiessner and Ms. Battiste for the work they had done in their respective drafting groups.

46. Indigenous participants underlined their determination to work together for the speedy adoption of the principles and guidelines for the protection of the heritage of the indigenous peoples by the United Nations.

47. Indigenous participants affirmed their wish and commitment to promote the adoption of the principles and guidelines by their own nations, communities and peoples as an international compact among themselves and as a valuable basis for dealing with non-indigenous interests, and to work together for the establishment of a global registry for indigenous nations and peoples who have agreed to respect and implement the principles and guidelines within their territories. They expressed their support for all international standard-setting initiatives by indigenous peoples that advance these actions.

48. The experts endorsed the recommendation of the Special Rapporteur that the report of the seminar and the revised draft principles and guidelines annexed thereto should be considered by the Sub-Commission at its next session, with the aim of transmitting them to the Commission on Human Rights at its fifty-seventh session.

49. The Special Rapporteur expressed her sincere wish that it would be possible for the General Assembly to adopt and proclaim a declaration of principles and guidelines on the protection of the heritage of indigenous peoples in the near future. The proclamation of such an instrument would constitute, inter alia, a strong message that the United Nations was committed to the protection of the heritage of indigenous peoples.

Annex I

PRINCIPLES AND GUIDELINES FOR THE PROTECTION OF THE HERITAGE OF INDIGENOUS PEOPLE

PRINCIPLES

1. The effective protection of the heritage of the indigenous peoples of the world benefits all humanity. Its diversity is essential to the adaptability, sustainability and creativity of the human species as a whole.

2. To be effective, the protection of indigenous peoples' heritage should be based broadly on the principle of self-determination, which includes the right of indigenous peoples to maintain and develop their own cultures and knowledge systems, and forms of social organization.

3. Indigenous peoples should be the source, the guardians and the interpreters of their heritage, whether created in the past, or developed by them in the future.

4. Recognizing, respecting and valuing their customs, rules and practices for the transmission of their heritage to future generations is essential to indigenous peoples, their identity and dignity.

5. Indigenous peoples' ownership and custody of their heritage should be collective, permanent and inalienable, or as prescribed by the customs, rules and practices of each people.

6. The discovery, use and teaching of indigenous peoples' heritage is inextricably connected with the traditional lands and territories of each people. Control over traditional territories and resources is essential to the continued transmission of indigenous peoples' heritage to future generations, and its full protection.

7. To protect and preserve their heritage, indigenous peoples must control their own forms of cultural transmission and education. This includes their right to the continued use and, wherever applicable, the restoration of their own languages and orthographies.

8. To protect and preserve their heritage, indigenous peoples must also exercise control over all research conducted on their people and any aspect of their heritage within their territories.

9. The prior, free and informed consent of the owners should be an essential precondition of any agreements which may be made for the recording, study, display, access, and use, in any form whatsoever, of indigenous peoples' heritage.

10. Any agreements which may be made for the recording, study, use or display of indigenous peoples' heritage must ensure that the peoples concerned continue to be the principal beneficiaries of any use or application.

11. Nothing in this declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire under national or international law; neither may it be construed as violating universal standards of human rights.

GUIDELINES

Definitions

12. The heritage of indigenous peoples has a collective character and is comprised of all objects, sites and knowledge including languages, the nature or use of which has been transmitted from generation to generation, and which is regarded as pertaining to a particular people or its territory of traditional natural use. The heritage of indigenous peoples also includes objects, sites, knowledge and literary or artistic creation of that people which may be created or rediscovered in the future based upon their heritage.

13. The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic creation such as music, dance, song, ceremonies, symbols and designs, narratives and poetry and all forms of documentation of and by indigenous peoples; all kinds of scientific, agricultural, technical, medicinal, biodiversity-related and ecological knowledge, including innovations based upon that knowledge, cultigens, remedies, medicines and the use of flora and fauna; human remains; immoveable cultural property such as sacred sites of cultural, natural and historical significance and burials.

14. Every element of an indigenous peoples' heritage has owners, which may be the whole people, a particular family or clan, an association or community, or individuals, who have been specially taught or initiated to be such custodians. The owners of heritage must be determined in accordance with indigenous peoples' own customs, laws and practices.

Transmission of heritage

15. Indigenous peoples' heritage should continue to be transmitted, preferably through indigenous languages, and learned in the forms traditionally used and rules and practices for the culturally appropriate transmission of this heritage and dissemination of its use should be formally recognized and incorporated in the national legal system.

16. Governments, international organizations and private institutions should:

(a) support the development of educational, research, and training centres which are controlled by indigenous communities, and strengthen these communities' capacity to document, protect, teach, and apply all aspects of their heritage;

(b) ensure that the use of traditional languages in education, arts and the mass media is respected and, to the extent possible, promoted and strengthened;

(c) support the development of regional and global networks for the exchange of information and experience among indigenous peoples in the fields of science, culture, education and the arts, including support for systems of electronic information and multi-media communication;

(d) provide the necessary financial resources and institutional support to ensure that every indigenous child has the opportunity to know, develop and exercise the manifestation of his/her heritage, especially to achieve full fluency and literacy in his/her own language, as well as an official language.

Recovery and restitution of heritage

17. Governments, international organizations and private institutions should assist indigenous peoples and communities in recovering control and possession of their moveable cultural property and other heritage, including from across international borders, through adequate agreements and/or appropriate domestic governmental action including if necessary the creation of adequate institutions and mechanisms.

18. In cooperation with indigenous peoples, UNESCO should facilitate the mediation of the recovery of moveable cultural property from across international borders, at the request of the traditional owners of the property concerned.

19. Human remains and associated funerary objects and documentation must be returned to their descendants in a culturally appropriate manner, as determined by the indigenous peoples concerned. Documentation may be retained, or otherwise used only in such form and manner as may be agreed upon with the peoples concerned.

20. Moveable cultural property should be returned wherever possible to its traditional owners, particularly if shown to be of significant cultural, religious or historical value to them. Moveable cultural property should only be retained by universities, museums, private institutions or individuals in accordance with the terms of a recorded agreement with the traditional owners for the sharing of the custody and interpretation of the property.

21. Under no circumstances should human remains or any other sacred elements of an indigenous peoples' heritage be publicly displayed, except in a manner deemed appropriate by the peoples concerned.

22. In the case of objects or other elements of heritage which were removed or recorded in the past, the traditional owners of which can no longer be identified precisely, the traditional owners are presumed to be the indigenous people associated with the territory from which these objects were removed or recordings were made.

National legislation and programmes

23. National laws for the protection of indigenous peoples' heritage should:

(a) be adopted following consultations with the peoples concerned, in particular the traditional owners and teachers of religious, sacred and spiritual knowledge, and, wherever possible, should have the informed consent of the peoples concerned;

(b) guarantee that indigenous peoples can obtain prompt, effective and affordable judicial or administrative action in their own languages to prevent, punish and obtain full restitution and just compensation for the acquisition, documentation or use of their heritage without proper authorization of the traditional owners;

(c) deny to any person or corporation the right to obtain patent, copyright or other legal protection for any element of indigenous peoples' heritage without adequate documentation of the free and informed consent of the traditional owners to an arrangement for the sharing of ownership, control, use and benefits;

(d) ensure the labelling, correct attribution and legal protection of indigenous peoples' artistic, literary and cultural works whenever they are offered for public display or sale.

24. In the event of a dispute over the custody or use of any element of an indigenous peoples' heritage, judicial and administrative bodies should be guided by the advice of indigenous elders who are recognized by the indigenous communities or peoples concerned as having specific knowledge of traditional laws.

25. Governments should take immediate steps, in cooperation with the indigenous peoples concerned, to identify sacred and ceremonial sites, including burials, healing places, and traditional places of teaching, and to protect them from unauthorized entry, use, destruction or deterioration.

Researchers and scholarly institutions

26. Any person, organization or group of organizations whatsoever legal or factual form, aim or activity (profit/non-profit; public/private; local/national/regional or international) must refrain from any act, whatsoever its nature, having as its purpose or effect the use or exploitation of any part of indigenous peoples' heritage whatsoever the means or forms given to this act.

27. All researchers and scholarly institutions within their competences should take steps to provide indigenous peoples and communities with comprehensive inventories of the cultural property, and documentation of indigenous peoples' heritage, which they may have in their custody.

28. Researchers and scholarly institutions should return all elements of indigenous peoples' heritage to the traditional owners upon demand, or obtain formal agreements with the traditional owners for the shared custody, use and interpretation of their heritage.

29. Researchers and scholarly institutions should decline any offers for the donation or sale of elements of indigenous peoples' heritage, without first contacting the peoples or communities directly concerned and ascertaining the wishes of the traditional owners.

30. Researchers and scholarly institutions must refrain from engaging in any study of previously undescribed species or cultivated varieties of plants, animals or micro-organisms, or naturally occurring pharmaceuticals, without first obtaining satisfactory documentation that the specimens were acquired with the consent of the traditional owners.

31. Researchers must not publish information obtained from indigenous peoples or the results of research conducted on flora, fauna, microbes or materials discovered through the assistance of indigenous peoples, without identifying the traditional owners and obtaining their consent to citation or publication and provide compensation when a commercial benefit is generated from such information.

32. No research or research application concerning the human genome should prevail over respect for the human rights, fundamental freedoms and human dignity of indigenous individuals and peoples.

33. Researchers and scholarly institutions should make every possible effort to increase indigenous peoples' access to all forms of medical, scientific and technical education, and participation in all research activities which may affect them or be of benefit to them.

34. Professional associations of scientists, engineers and scholars, in collaboration with indigenous peoples, should sponsor seminars and widely disseminate publications to promote ethical conduct in conformity with these guidelines and discipline members who act in contravention.

Business and industry

35. In dealings with indigenous peoples, business and industry should respect the same guidelines as researchers and scholarly institutions.

36. Business and industry should ensure they have a prior, free and informed consent of indigenous peoples when entering into agreements for the rights to discover, record and use previously undescribed species or cultivated varieties of plants, animals or micro-organisms, or naturally occurring pharmaceuticals. Any agreement should ensure that the indigenous peoples concerned continue to be primary beneficiaires of commercial application.

37. Business and industry should refrain from offering incentives to any individuals to claim traditional rights of ownership or leadership within an indigenous community, in violation of their trust within the community and the customs and laws of the indigenous peoples concerned.

38. Business and industry should refrain from employing anyone to acquire and record traditional knowledge or other heritage of indigenous peoples in violation of these guidelines.

39. Business and industry should contribute financially and otherwise to the development of educational and research institutions controlled by indigenous peoples and communities.

40. All forms of tourism based on indigenous peoples' heritage must be restricted to activities which have the formal approval of the peoples and communities concerned, and which are conducted under their supervision and control.

Artists, writers and performers

41. Artists, writers and performers should refrain from incorporating elements of indigenous heritage, particularly those of a sacred character, into their works without the prior, free and informed consent of the traditional owners.

42. Artists, writers and performers should support the full artistic and cultural development of indigenous peoples, and encourage public support for the development and greater recognition of indigenous artists, writers and performers.

43. Artists, writers and performers should contribute, through their individual works and professional organizations, to the greater public understanding and respect for the indigenous heritage associated with the country in which they live as well as with the international community as a whole.

Public information and education

44. The media in all countries should take effective measures to promote understanding of and respect for indigenous peoples' heritage, in particular through special broadcasts and public-service programmes prepared in collaboration with indigenous peoples.

45. The media should respect the privacy of indigenous peoples, in particular concerning traditional religious, cultural and ceremonial activities, and refrain from exploiting or sensationalizing indigenous peoples' heritage.

46. The media should actively assist indigenous peoples in exposing any activities, public or private, which destroy or degrade indigenous peoples' heritage.

47. Governments must ensure that school curricula and textbooks teach understanding and respect for indigenous peoples' heritage and history and recognize the contribution of indigenous peoples to creativity and cultural diversity.

International organizations

48. The Secretary-General and the governing bodies of the competent specialized agencies should ensure that the task of coordinating international cooperation in this field is entrusted to appropriate organs and specialized agencies of the United Nations, with adequate means of implementation.

49. In cooperation with indigenous peoples, the United Nations should bring these principles and guidelines to the attention of all Member States through, inter alia, international, regional and national seminars and publications, with a view to promoting the strengthening of national legislation and international conventions in this field.

50. The United Nations should publish and circulate to all parties concerned (Governments, international organizations, indigenous peoples and non-governmental organizations) a comprehensive annual report, based upon information from all available sources, including indigenous peoples themselves, on the problems experienced and solutions adopted in the protection of indigenous peoples' heritage in all countries.

51. Indigenous peoples and their representative organizations should enjoy direct access to, and participate in, all intergovernmental discussions and negotiations in the field of intellectual property rights, to share their views on the measures needed to protect their heritage through international law.

52. In collaboration with indigenous peoples and Governments concerned, the United Nations should develop a confidential list of sacred and ceremonial sites that require special measures for their protection and conservation, and provide financial and technical assistance to indigenous peoples for these purposes.

53. In collaboration with indigenous peoples and Governments concerned, the United Nations should establish a trust fund with a mandate to act as a global agent for the recovery of compensation for the unconsented or inappropriate use of indigenous peoples' heritage, and to assist indigenous peoples in developing the institutional capacity to defend their own heritage.

54. United Nations operational agencies, as well as the international financial institutions and regional and bilateral development assistance programmes, should give priority to providing financial and technical support to indigenous communities for capacity-building and exchanges of experience focused on local control of research and education.

55. The United Nations should consider as a matter of urgent priority the drafting of a convention for the protection of the heritage of indigenous peoples.

Annex II

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PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES

Report of the Working Group on Minorities on its sixth session

(Geneva, 22-26 May 2000)

Chairperson-Rapporteur: Mr. Asbjørn Eide

GE.00-14203 (E)

CONTENTS

		Paragraphs	Page
	Introduction	1 - 3	3
I.	ORGANIZATION OF THE SESSION	4 - 15	3
	A. Election of officers	4	3
	B. Attendance	5 - 12	3
	C. Documentation	13	5
	D. Organization of work	14 - 15	5
II.	REVIEWING THE PROMOTION AND PRACTICAL REALIZATION OF THE DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES	16 - 77	6
	A. Commentary to the Declaration	17 - 30	6
	B. The existence and recognition of minorities	31 - 54	8
	C Developments at the regional and international levels	55 - 77	14
III.	EXAMINING POSSIBLE SOLUTIONS TO PROBLEMS INVOLVING MINORITIES, INCLUDING THE PROMOTION OF MUTUAL UNDERSTANDING BETWEEN AND AMONG MINORITIES AND GOVERNMENTS	78 - 95	20
	A. Multicultural and intercultural education	79 - 81	20
	B. Role of United Nations bodies and specialized agencies	82 - 84	21
	C. Conflict prevention in situations involving minorities	85 - 95	22
IV.	RECOMMENDING FURTHER MEASURES, AS APPROPRIATE, FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF PERSONS BELONGING TO NATIONAL AND ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES	96 - 99	25
V.	THE FUTURE ROLE OF THE WORKING GROUP	100 - 108	26
VI.	CONCLUSIONS AND RECOMMENDATIONS	109 - 124	28
	A. General	110 - 113	28
	B. Decisions made at the sixth session	114 - 124	28
Annex:	List of documents before the Working Group on Minorities at its sixth session		31

Introduction

1. The establishment of the Working Group on Minorities was recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1994/4 of 19 August 1994, authorized by the Commission on Human Rights in its resolution 1995/24 of 3 March 1995, and endorsed by the Economic and Social Council in its resolution 1995/31 of 25 July 1995. By decision 1998/246 of 30 July 1998, the Economic and Social Council extended the mandate of the Working Group with a view to its holding one session of five working days annually.

2. In accordance with its mandate, the Working Group has been entrusted to: (a) review the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; (b) examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments; and (c) recommend further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.

3. In compliance with the above-mentioned resolutions, the Working Group held 10 public meetings from 22 to 26 May 2000.

I. ORGANIZATION OF THE SESSION

A. Election of officers

4. At its sixth session, the Working Group re-elected Mr. Asbjørn Eide as Chairperson-Rapporteur for a further term.

B. Attendance

5. The session was attended by the following independent experts of the Sub-Commission: Mr. José Bengoa, Mr. Asbjørn Eide, Mr. Vladimir Kartashkin, Ms. Deepika Udagama, Mr. Yeung Kam Yeung Sik Yuen.

6. The following States Members of the United Nations were represented by observers: Albania, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Bhutan, Bosnia and Herzegovina, Chile, China, Colombia, Croatia, Cuba, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, Germany, Hungary, India, Iran (Islamic Republic of), Iraq, Japan, Jordan, Latvia, Lithuania, Malaysia, Mauritania, Mexico, Netherlands, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Slovakia, Spain, Sri Lanka, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United States of America, Uruguay.

7. The following non-member States were represented by observers: Holy See, Switzerland.

8. The following United Nations bodies and specialized agencies and intergovernmental organizations were represented at the session: International Labour Organization, United Nations Educational, Scientific and Cultural Organization, League of Arab States.

9. The following national institutions were represented at the session: Office of the Hungarian Parliamentary Commissioner for Minorities, Swiss Federal Commission against Racism.

10. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers: Association of World Citizens, Caucasians United for Reparations and Emancipation, December 12th Movement International Secretariat, Federal Union of European Nationalities, Franciscans International, Indian Movement "Tupaj Amaru", Interfaith International, International Centre for Ethnic Studies, International Council of Jewish Women, International Institute of Non-Aligned Studies, International Human Rights Association of American Minorities, International Movement against All Forms of Discrimination and Racism, International Save the Children Alliance (SCF-UK), Minority Rights Group, World Federation of United Nations Associations, World Muslim Congress.

11. The following other non-governmental organizations were represented by observers: A4 Ngoc Khanh Science Village, Adalah Organisation, African Indigenous and Minority Peoples Organization, Ahmadiyya Muslim Association, Arid Lands Institute, Association for Democratic and Open Society, Association for Democratic Initiatives, Association Mauritanienne des Droits de l'Homme, Bahn-Ruam-Jai Project and Conto, Bhutan Women and Children Organisation, Bulgaria Macedonian Minority, Burma Peace Foundation, Centre for Human Ecology Studies of Highlands, Centre for Human, Civil and Autonomous Rights, Centre for Human Rights and the Prevention of Ethnic Conflict, Citizens Constitutional Forum, Dalit Cultural Front, Human Rights Education Movement of India, Espacio Afroamericano, Human Rights Alliance, Hungarian World Federation, Hungarian Youth Forum, International Foundation Lelio Basso for Rights and Liberation of Peoples, the Romanian Institute for Human Rights (IRDO), Kurdish Reconstruction Organization, Mecs Laszlo Association, Minority Rights Movement of San Andres, Providence and Santa Catalina Islands, Colombia, National Campaign on Dalit Human Rights, National Commission for Justice and Peace (Pakistan), National Movement for the Human Rights of the Afro-Colombian Communities-Cimarron, National Society for Human Rights of Namibia, Niger Delta Human and Environmental Rescue Organization, Organisation for Inter-ethnic Dialogue, Romani Criss, Sikh Human Rights Group, Slovakia Association for Democratic and Open Society, Sudanese Women's Voice for Peace, Representative of The Treaty Commission from The Maroons and Indigenous Peoples and the Kingdom of the Netherlands, Turkman Cooperation and Cultural Foundation, Indigenous People, Uganda Land Alliance, World Federation of Hungarians.

12. The following scholars participated in the meetings of the Working Group: Mr. Gyula Csurgai (Geneva Peace Research Institute), Mr. Edward Chaszar (University of Pennsylvania), Ms. Monika Freiberg (Norwegian Institute of Human Rights), Mr. Victor-Yves Ghebali (Institut Universitaire de Hautes Etudes Internationales, Geneva), Mr. Geoff Gilbert (University of Essex), Ms. Marie-Hélène Giroux (University of Montreal), Mr. Solomon Mebrie Gofie (Norwegian Institute of Human Rights), Ms. Sara Gustafsson (Raoul Wallenberg Institute, University of Lund), Mr. Tom Hadden (Queen's University, Belfast), Ms. Kristin Holter

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C. Documentation

13. The documents before the Working Group are listed in the annex. All the working papers submitted are available from the secretariat or are to be found on the OHCHR Web site at http://www.unhchr.ch.

D. Organization of work

14. At its first meeting, on 22 May 2000, the Working Group adopted the following agenda:

1. Adoption of the agenda.

2. Organization of work.

3. (a) Reviewing the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

   (b) Examining possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments;

   (c) Recommending further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.

4. The future role of the Working Group.

5. Other matters.

15. The Chairperson-Rapporteur reviewed the work undertaken in previous sessions and made mention of the two seminars held in the past year in Montreal on multicultural and intercultural education, and in Arusha on minority and indigenous issues. Referring to a paper presented the previous year by the International Centre for Ethnic Studies on improving the work of the Group, he requested all participants to reflect over the next few days on how the Working Group could best improve its methods of work. The Chairperson-Rapporteur paid tribute to the late Mr. Neelan Tieruchelvam, who had been the Director of the International Centre for Ethnic Studies, Colombo, Sri Lanka. He asked that his memory encourage everyone to seek more determinedly for peaceful, constructive and integrative solutions by which all groups could be accommodated and take their place in the overall framework of human rights.

II. REVIEWING THE PROMOTION AND PRACTICAL REALIZATION OF THE DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

16. Under this agenda item, papers were presented on the draft commentary to the Declaration and on the existence and recognition of minorities.

A. Commentary to the Declaration

17. Mr. Eide introduced his commentary to the Declaration (E/CN.4/Sub.2/AC.5/2000/WP.1), based on the initial draft (E/CN.4/Sub.2/AC.5/1998/WP.1) and on the observations received in written form and made orally (see E/CN.4/Sub.2/AC.5/1999/WP.1 and E/CN.4/Sub.2/1999/21, paras. 18-25), and drew attention to those elements where most changes had been made. He noted that while a degree of integration was required in every national society, the protection of minorities was intended to ensure that integration did not become unwanted assimilation and did not undermine the group identity of persons belonging to different groups living on the territory of the State. The four underlying requirements for the protection of minorities were: protection of their existence, non-exclusion, non-discrimination and non-assimilation.

18. Mr. Kartashkin, referring to the complexities of minorities' situations, mentioned instances where a national minority could be composed of both citizens and non-citizens of a State, the main distinction being with respect to the enjoyment of political rights by non-citizens of that State. He noted that the Declaration did not give minorities the right to "external" self-determination, but the implementation of the Declaration could in some instances be served by providing "internal" self-determination. That, however, should be determined on a case-by-case basis within each State but not be regulated by international law. Mr. Gilbert argued that "internal" self-determination could often be substituted by the term "autonomy". The observer for Switzerland argued that although self-determination was a complex issue, it could enhance participation in the governance of the State. Mr. Gilbert expressed support for that view.

19. The observer for Pakistan said that the right to self-determination was one of the sacrosanct principles of international law enshrined in the Charter of the United Nations and that the third preambular paragraph 3 of the Declaration on Minorities expressly called for realization of principles set out in the Charter. The provisions of the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations also provided clear guidance on the issue of self-determination. Its implementation depended on people deciding freely and democratically to join a State, which was viewed as the essence of the right to self-determination. He argued that a minority community could acquire a collective right to exercise self-determination if its collective right and identity were being suppressed and where the Government of the State in question did not fulfil the requirements for respecting its territorial integrity, as set out in the Declaration on Friendly Relations. The Working Group did not have the mandate to limit the scope of any principle of international law or to accord a definitive judgement.

20. Mr. Eide pointed out that the Declaration on Minorities neither extended nor limited the right of peoples to self-determination. That right was well established under international law,

but was not contained in the Declaration, which only referred to the rights of persons belonging to minorities, not to the rights of peoples. That was what was pointed out in the commentary. Neither the Working Group nor the commentary intended to pass any judgement on the scope of the right to self-determination as set out in the instruments referred to by the observer for Pakistan.

21. The observer for Egypt noted that that there was no reference to the concept of extensive autonomy in the Declaration and that to include such an issue might complicate matters. He therefore disagreed with comments made by other observers which seemed to imply that the State's duty to protect the rights of minorities included an obligation to increase their autonomy. The observer for Switzerland, for his part, emphasized the usefulness of the concept of extensive autonomy, which had allowed cultural diversities to be reconciled in his country. On the issue of autonomy, the observer for the Federal Union of European Nationalities noted that the Helsinki Final Act of the Conference on Security and Co-operation in Europe, signed in 1975, referred to the "equal rights and self-determination of peoples". The Act not only affirmed the territorial integrity of States but also recognized the autonomy rights of ethnic groups as a fundamental part of self-determination. Autonomy, he stated, was the best preventive measure against secession and conflict. He identified three different types of autonomy: territorial, cultural and local, and pointed out that the choice of autonomy depended on the particularities of each situation. Mr. Eide suggested there was a need to discuss the pre-conditions for a satisfactory functioning of autonomy. Mr. Gilbert spoke of the need for a working paper on effective participation and autonomy in international law.

22. The observer for Pakistan expressed the view that the use of the term "good governance" in the commentary should be avoided, especially given the lack of clarity as to its precise meaning. The observer for Egypt took a similar position. Mr. Eide explained that he understood the term to mean a Government which was responsive to the concerns of the people and good at accommodating those concerns.

23. The observers for Egypt and India asked for clarification about the purpose of the draft commentary, the observer for Egyp. expressing the view that a declaration, which was a statement of universal principles, might be constrained by a commentary. He suggested that existing treaty monitoring bodies could be used to monitor the principles of the Declaration and spoke of the need for the consolidation of achievements, rather than further development of legal standards. If the commentary were considered an interpretation of the Declaration, it could not fail to reflect the views of States. Mr. Eide said that the commentary would be indicative of the Working Group's understanding of the Declaration in the light of the comments made by Governments and non-governmental organizations in writing and orally during previous sessions.

24. The meaning of the term "national minority" in the Declaration was the subject of some debate. Some argued that it could have undesirable connotations, such as a requirement to redraw borders. Others argued that the concept of national minorities reflected a reality that existed and to question the validity of its inclusion in the Declaration would be retrogressive.

25. It was also suggested that further references to the provisions of other international instruments and the jurisprudence of the treaty bodies could be incorporated in the commentary.

26. The observer for India emphasized the importance of protecting the rights of minorities and the fact that such protection contributed to the political stability of the State in which those minorities lived. Mr. Hadden and the observer for Switzerland suggested that the commentary should provide clarification that positive action for integration could be authorized under the Declaration.

27. Mr. Skurbaty argued that the commentary should reflect the need to ensure: that minority rights matters were encompassed in quests for a world order; that the rule of law should be more synonymous with the promotion of justice; that the emancipation and empowerment of persons belonging to minorities were promoted; and that the accommodation of different groups within State structures was not only a fundamental task of the State but also given priority in the Constitution and other legislation and policy.

28. The observers for Bangladesh, Egypt and Pakistan sought clarification on the legal status of the commentary. The observer for Egypt argued that certain issues relating to minorities remained to be conceptualized. That would have implications for the possible drafting of a future convention. The observers for Turkey, India and Switzerland noted the importance of the commentary in providing guidance and assistance to Governments in evaluating the Declaration or implementing the rights of minorities. The observers for Egypt, Turkey and India spoke of the need for work on the commentary to continue, while the observer for Switzerland expressed agreement to its adoption, given the Working Group's previous recommendation to that effect. Mr. Kartashkin suggested that the commentary on the Declaration be issued as the Chairperson-Rapporteur's commentary, taking into account observations made by members of the Working Group and by observers who had offered comments and proposals orally and in writing.

29. Mr. Eide also presented for comment the first draft of a working paper on the relationship between the rights of persons belonging to minorities and those of indigenous peoples, to be prepared jointly with the Chairperson of the Working Group on Indigenous Populations, for submission to the Sub-Commission at its next session. He noted that the rights of minorities were individual ("the rights of persons belonging to"), and the rights of indigenous peoples were primarily collective.

30. The observer for the Centre for Human, Civil and Autonomous Rights argued that the right to land was considered a fundamental issue for indigenous peoples owing to their special relationship to the land and its resources and was considered to support their claim to other rights, including self-determination. She acknowledged that indigenous peoples normally supported collective property ownership, while minorities might consider private property to be more basic and fundamental. However, she urged that in those instances where indigenous peoples and minorities were living alongside each other, an exclusive approach to land should not be taken which would disadvantage one of the groups.

B. The existence and recognition of minorities

31. Mr. Bengoa presented his working paper on the existence and recognition of minorities (E/CN.4/Sub.2/AC.5/2000/WP.2). He had looked at the existence of minorities from a dynamic perspective and as a constructive rather than a threatening influence. He had identified three

generations of minorities. The first generation was linked to the break-up of the European empires in the period associated with the First World War and the League of Nations. The second generation was connected to the United Nations and the process of decolonization. The third generation was a corollary of the processes of globalization, which included the phenomenon of "ethno-genesis", described as the reconstruction of lost or partially lost ties by human groups. He pointed out that whereas the first generation of minorities, had singled out substantive elements for definition, such as language and religion, the subjective element of the minority's awareness of its own identity had now become the most decisive factor.

32. Mr. Bengoa referred to his analysis of the relationship between minorities and territory, race and indigenous peoples. He had examined issues pertaining to the so-called "new" minorities, such as displaced persons, refugees and migrant workers. The relationship between the national question and self-determination was also discussed. In this connection, he argued that, for several decades, the distinction between ethnic group and nation had been based on the premise that the ethnic character of a minority social group did not imply the right to self-determination. International political events, in particular in the Balkans during the 1990s, had complicated the debate. In his opinion, the United Nations had contributed to the validation of the processes of ethno-genesis, and he cited as an example the case of the "Albano-Kosovar" province of Yugoslavia.

33. By way of conclusion, Mr. Bengoa considered the recognition of a minority to be a fundamental step both for the protection of the rights of a minority and for restraining ethnic conflict. He indicated that the need to address such matters was a pending task and that, in his view, a major lacuna in both international legislation and conflict resolution mechanisms related to cases where a State did not accept the existence of a minority group.

34. The observer for Egypt appreciated the approach taken by Mr. Bengoa with its emphasis on description rather than definition, which in his view, was more suitable in view of the fact that the concept was still evolving. The observer for the Minority Rights Group agreed that it might never be possible to produce a definition of minorities, as it would be an attempt to impose a concept on a dynamic situation. The observer for the Indian Movement "Tupaj Amaru" expressed the view that it was for minorities to define themselves and the obligation of States to recognize the rights of minorities.

35. The observer for the National Movement for the Human Rights of the Afro-Colombian Communities suggested that it might be worthwhile to distinguish between assimilation, which implied homogeneity and non-recognition of diversity, and integration, which implied democratic participation and non-discrimination.

36. In relation to the issue of the recognition of minorities, the observer for the Minority Rights Group considered that clear criteria were available, despite the lack of mechanisms for conflict-resolution, in the case of minorities not recognized by a State. Mr. Kartashkin noted that, although recognition gave legitimacy to minorities, in his view, it did not necessarily guarantee protection of their rights. He suggested that recommendations be submitted next year on ways in which the United Nations could address recognition issues, and stressed the need to develop a convention on minorities and to establish a monitoring body to review its implementation. With reference to the situation in Kosovo mentioned in Mr. Bengoa's paper,

he argued that self-determination was a right of nations, not minorities. Self-determination was directly related to the process of decolonization. The principle of territorial integrity was important and a change in Statehood should only be achieved by peaceful means. This, he argued, had not been respected when the North Atlantic Treaty Organisation (NATO) had taken military action in Kosovo.

37. In the discussion of the item on reviewing the promotion and practical realization of the Declaration, several government observers provided valuable information and responded to information and concerns expressed by non-governmental organizations. In order to reflect the constructive dialogue, which took place, the main elements of the information given by non-governmental organizations and the responses given by government observers are provided below. In cases where a Government was not in a position to comment on information presented owing to the absence of an observer at the session, the Working Group will in fairness to that Government make such information available to it by letter for comment. The observer for the Syrian Arab Republic pointed out that his Government had responded to the allegations of a non-governmental organization at the previous session of the Working Group, but that his intervention had not been reflected in the report. The Chairperson-Rapporteur apologized for the omission and reaffirmed the intention of the Working Group to undertake a constructive dialogue.

1. Constitutional and legal provisions as well as other general measures protecting the existence and identity of minorities (art. 1 of the Declaration)

38. The observer for Norway informed the Working Group that the Government has presented to the Norwegian Parliament a plan of action for human rights, identifying discrimination and racism, the Sami Policy and national minorities as priority areas. The Centre for Combating Ethnic Discrimination, providing legal aid, had been set up and a resource centre for the rights of indigenous peoples would soon be established which would deal with international and national issues. Norway has ratified the European Framework Convention on Minorities and had recognized Kvens and Skogfinns, Travellers, Roma/Gypsies and Jews as minorities. The Sami were protected as an indigenous people under International Labour Organization Convention No. 169 on Indigenous Peoples, which had been ratified by Norway.

39. The observer for the Russian Federation mentioned two programmes now in operation in her country: the programme to increase tolerance and eradicate xenophobia, and the programme to eradicate political and religious extremism. She also referred to her country's concern for the rights of the Russian minorities in other States, in view of the number of persons returning to the Russian Federation from newly independent States, and suggested that a working paper might be prepared on positive experiences of countries in dealing with cases of minorities in diaspora.

40. The observer for Slovakia provided information on the conclusion of bilateral treaties between Slovakia and Hungary on culture and education, and on the adoption, on 3 May 2000, of a resolution laying out a strategy and set of implementation measures for addressing problems related to the situation of the Roma national minority, including the allocation of financial resources to each of almost 280 tasks outlined for action. Legislative measures included the adoption in 1999 of a law which dealt with the use of minority languages in official communications and public documents in those regions where persons belonging to minorities

constituted at least 20 per cent of the population. Regarding the Ministry of Culture's financial support to cultural activities in 1999, the Hungarian national minority had been allocated 50.6 per cent of total financial subsidies set aside for all 12 national minorities in Slovakia.

41. The observer for Spain, representing the Government of the Autonomous Community of the Basque Country of the State of Spain, stated that the Statute of Autonomy had granted the Basque Country extensive legislative and executive autonomy, but less autonomy in judicial terms.

42. Observers representing minority groups described situations in which the existence and identity of the minority concerned were allegedly not adequately protected. They included the Ijaw in Nigeria (Niger Delta Human Rights and Environmental Rescue Organisation), the Acholi people (Sudanese Women's Voice for Peace), the African-Americans in the United States of America who had lost their own language (Caucasians United for Reparations and Emancipation) and the Ovazemba people of Namibia who had not been recognized by their Government as their traditional leader did not have the right to participate in the Traditional Leaders Council (National Society for Human Rights).

43. The observer for the Sikh Human Rights Group argued that fear of assimilation was a particular problem for minority religious groups and communities. While noting the efforts made by the Government of India to promote pluralism and multiculturalism, he expressed concern about developments over the previous three years and about the alleged assimilation of minority religious communities into the dominant Hindu religion in India. The observer for India stated that government policy was formed within the framework of the Constitution and other legislation and that the Government was not pursuing any so-called policy of assimilation of minorities.

44. The observer for the Human Rights Alliance-Coalition for Justice in Iraq said that Kurds, Turkomans and Assyrians had been forcibly removed from the oil-rich Kurdish areas of Iraq and that displacement of minority groups from other regions had also taken place. The observer for the Kurdish Reconstruction Organization stated that large numbers of Kurdish families had been forcibly expelled from their homes, and schools and churches had been closed down by the State. The observer for Turkman Cooperation International referred to alleged oppression, ethnic cleansing and discrimination practised against the Turkmen.

45. In response, the observer for Iraq provided an overview of the legal framework which protected minorities in Iraq, including the Constitution. Autonomy arrangements included a legislative and executive body. Kurdish had been established as a second language in all schools in Iraq. The observer for Iraq encouraged representatives of minorities to undertake dialogue and discussion with the Government in order to find a peaceful solution to their minority situation. He also referred to the rights of the Turkmen minority in the areas of culture and education, including the use of their mother tongue, as well as having their own newspapers and television channels in areas where they lived. External factors exacerbated the tension between Governments and minorities.

2. The right of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination

46. The observer for Franciscans International referred to the situation of religious minorities in Pakistan. Laws which were said to be discriminatory in their effect on persons belonging to religious minorities were the Shariah Act of 1991, the Hudud and Zina Ordinance, the Qisas and Diyat Ordinance, the Law of Evidence and other laws more commonly known as the Blasphemy Laws of the Pakistan Penal Code. The representative of the Ahmadiyya Muslim Association stated that Ahmadi Muslims in Pakistan were persecuted and continued to live under the threat of the misuse of the Blasphemy Laws.

47. The observer for Pakistan stressed that for any dialogue to be successful it should be based on facts and give due recognition to the challenges that existed on the ground in Pakistan. He also informed the Working Group that the Government was in the process of developing a long-term approach to all issues concerning minorities and had appointed the Minister for Minorities from the Christian minority. Section 295 c of the Constitution was not discriminatory in nature as it offered equal protection to all religions. However, he agreed that the Blasphemy Laws had been misused in their application. The Government was committed to putting a stop to such abuse.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation (art. 2.3)

48. Observers presented examples of cases where, in their opinion, persons belonging to minorities were unable to participate in decisions affecting them, namely: the Ijaw in Nigeria, excluded from the Niger Delta Development Commission (Niger Delta Human Rights and Environmental Rescue Organisation); the native Afro-Anglo-Caribbean people of the San Andres islands in Colombia, who were not consulted regarding the international treaties with neighbouring countries which conceded parts of their traditional fishing areas (Minority Rights Movement of San Andres, Providence and Santa Catalina Islands, Colombia).

49. The observer for Franciscans International said that the separate electorate system of Pakistan, by which citizens of Pakistan were barred from voting for candidates other than those of their own religious identity, had led to increased religious intolerance and violations of human rights. The observer for Pakistan, in response, noted that the existing system of electoral representation had been designed for the effective participation of minorities and not their exclusion and had ensured that minorities occupied 10 seats in the National Assembly and 23 seats in provincial assemblies. He also stated that a call for the replacement of separate electorates by joint electorates had been made at the Convention on Human Rights and Human Dignity, held in the Spring of 2000 in Islamabad. The speaker emphasized that while the Government of Pakistan was committed to implementing that Convention's recommendations, factions within minority groups continued to insist that a separate electorate system guaranteed their participation in the political process, whereas a joint electorate would minimize their participation in the country's mainstream social and political life.

4. The right of persons belonging to minorities to learn their mother tongue and have instruction in their mother tongue (art. 4 3) and to be taught their history and culture (art. 4 4)

50. With regard to restrictions on the right of persons belonging to minorities to learn and have instruction in their mother tongue, reference was made to, inter alia, the Ijaw in Nigeria (Niger Delta Human Rights and Environmental Rescue Organisation), the Ovazemba (National Society for Human Rights in Namibia) and the native Afro-Anglo-Caribbean people (Minority Rights Movement of San Andres, Providence and Santa Catalina Islands, Colombia).

51. With regard to deficiencies of the educational system in ensuring teaching about the history and culture of minorities, mention was made to, inter alia, the situation of the Ovazemba (National Society for Human Rights in Namibia) and the Maroons and peoples of the interior in Suriname (representative of the Chairman of the Treaty Commission from the Maroons and Indigenous People and the Kingdom of the Netherlands).

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country (art. 4 5)

52. Observers representing minority groups described many situations in which the right of persons belonging to minorities to participate fully in the economic progress and development of their country were allegedly not adequately protected, namely: the Ijaw in Nigeria who were deprived of access to roads, clean drinking water, electricity, communication systems, medical facilities and educational centres (Niger Delta Human Rights and Environmental Rescue Organisation), the Rehoboth Basters, the Topnaars and the ovaHimba/ovaHerero who were seeing their access to land and their ecosystems endangered (National Society for Human Rights, Namibia) and the native Afro-Anglo-Caribbean people who were discriminated against in public governmental institutions (Minority Rights Movement of San Andres, Providence and Santa Catalina Islands, Colombia), the Hmong's continuing struggle over the rights to use of land in Nan province in Thailand (Centre for the Coordination on Non-Governmental Tribal Development Organization (CONTO)), and the peoples of the interior of Suriname who have lost control over the natural resources and the lands they inhabited (Treaty Commission from the Maroons and Indigenous People and the Kingdom of the Netherlands).

53. The observer for the Human Rights Education Movement in India asserted that Dalit women faced a double discrimination as women and Dalits in a patriarchial society, suffering from gender violence, sexual and economic exploitation, illiteracy and lack of access to education and other social services. Their health and housing situation also remained a problem. Reference was made to alarming rises in the incidence of sex determination or female infanticide. The observer for the National Campaign on Dalit Human Rights stated that non-recognition was not a problem faced by the Dalits as most Governments in South Asia had recognized the community, but their problems related more to the non-enforcement of mechanisms set up to improve their situation. Despite legislative and constitutional protection, including through the adoption by India of the 1989 Prevention of Atrocities Act, caste-based discrimination and abuse had not been prevented or prosecuted and caste remained a determinant factor in the attainment of social, political, civil and economic rights.

54. The observer for India reviewed constitutional guarantees, including of freedom of religion, as well as special safeguards for minority rights. Despite such constitutional provisions and safeguards, regrettably incidents of violence involving members of minority communities did occur, most often perpetrated by fringe elements. The Government of India had always condemned them in the strongest terms. The caste system as not strictly an issue of minorities. Constitutional and legal safeguards existed for persons belonging to scheduled castes. Many measures had been taken to combat discrimination and to outlaw such practices, throughout India's history since independence, but issues involved in protecting and promoting the rights of persons belonging to scheduled castes were complex and required a change of attitudes as well as social and economic change. Mention was made of the role the State had to play in that regard, including the adoption of affirmative action on behalf of people belonging to scheduled castes for the reservation of seats for them within the political system and for their representation in government service. He recognized the situation of women in general and particularly of Dalit women in India, and their subjection to discrimination and lack of political power and position. Action was being taken in India to address such problems, including by placing women at the centre of decision-making, at the local and village levels. He also referred to the ban placed on pre-natal sex determination with a view to countering the practice of termination of female foetuses.

C. Developments at the regional and international levels

55. At the third meeting, Mr. Bengoa introduced the report of the African Seminar on Multiculturalism, held in Arusha from 13 to 15 May 2000 (E/CN.4/Sub.2/AC.5/2000/WP.3). He informed the Working Group about the main contents of the report and the major points discussed at the Seminar. He made mention of the election of Ms. Naomi Kipuri, member of the Board of Trustees for Indigenous Voluntary Funds, as the Seminar's Chairperson-Rapporteur, and of the welcome address delivered by the President of the International Criminal Tribunal for Rwanda, Justice Pillay, who had spoken of the connections between the lack of respect for minority and indigenous rights and the matters dealt with by the Tribunal. Mr. Bengoa and other members of the Working Group expressed thanks to those who had participated in, funded and organized the seminar. One non-governmental organization indicated that it would be desirable for the Working Group to maintain some contacts with relevant tribunals.

56. The participants in the Seminar had discussed the relevance of the concepts and definition of minorities and indigenous peoples in Africa, Mr. Bengoa said. That discussion had served to reaffirm shared features of those groups in different parts of the world and to move beyond the perceived European focus with respect to minority issues and the Americas focus with respect to indigenous issues. Thematic issues and situations affecting specific minorities and indigenous peoples in Africa were described in the report of the Seminar. Particular mention had been made of their lack of access to social services, education and health. HIV/AIDS was viewed as a particular threat to the very survival of their communities. Land was also viewed as a central issue. Conclusions and recommendations were agreed to at the Seminar, with participants indicating that a follow-up meeting should be organized.

57. Ms. Udagama and observers spoke of the importance to the Working Group of its initiative to hold regional seminars. In that regard, she mentioned their usefulness in highlighting the experiences of minorities in different regions and in broadening the Working

Group's understanding of minority issues, as well as being a vehicle for advancing its mandate. Government participation in the seminars must be ensured, she said. She also suggested that the commentary could be presented at regional seminars to determine whether participants were in agreement with the Working Group's reading of the Declaration. In view of the support of the late Neelan Tiruchelvam to the Working Group, she suggested that appreciation of his contribution be expressed to his family. The Working Group agreed that a tribute would be sent.

58. The observer for the Association of World Citizens spoke about issues raised in the report of the Arusha Seminar. He questioned the usefulness in the African context of the concept of indigenous, if it meant prior inhabitation of an area, given that migration had been a continuous phenomenon in the region. He added that history provided a framework in which to work, but should not be used to create justifications for socio-economic policy. Mention was also made of the various studies and reports undertaken on ethnic issues in Africa, including recent reports submitted to the Preparatory Committee for the World Conference against Racism.

59. In the opinion of the observer for the Centre for Civil, Human and Autonomous Rights, the Arusha Seminar had ensured that issues important to the Africa region were now encompassed within the debate on minorities and indigenous peoples, their identity and protection. She also drew attention to the exclusion of groups as a potential cause of conflict, especially where there was competition over access to and use of land. The observer for the Uganda Land Alliance also made the latter point. She referred particularly to the situation of pastoralists and of their displacement from land in northern Uganda, southern Sudan and parts of Kenya, allegedly on account of the search for minerals or for conservation purposes. She also indicated that other issues remained to be addressed in the African region, including the situation of Asian minorities. Regarding recommendations to improve the situation of minorities in the African region, the observer for the Sudanese Women's Voice for Peace mentioned, inter alia, strengthening the role of civil society and encouraging the development of regional advocacy networks.

60. Referring to the report on the Arusha Seminar, the observer for the African Indigenous and Minority Peoples Organization supplemented information it contained on the situation of the Batwa in Rwanda, Burundi, the Democratic Republic of Congo and Uganda. In particular, he spoke of the common problems affecting the Batwa, explaining that while indigenous to those countries, they did not own land and suffered from severe poverty and negative stereotyping, as well as a lack of access to public and social services, especially health and education.

61. Mr. Sik Yuen highlighted some of the points which he proposed to incorporate in his future working paper on the human rights problems and protection of the rights of the Roma, to be submitted to the next session of the Sub-Commission. He proposed to place the main problems faced by the Roma in two broad categories: on the one hand were issues associated with racism and manifestations of violence and on the other those related to the economic and social situation of the Roma. He emphasized the importance of developing mechanisms to ensure the effective and full participation of the Roma in public and political life. Establishing the trust of the Roma was vital too and education had a role to play in that regard. Mr. Sik Yuen indicated that very little attention had been paid to the issues affecting the Roma by the United Nations human rights charter-based bodies. He stressed that issues of the Roma were deserving of much attention and further study, with the assistance of non-governmental

organizations, Governments and other experts. In addition, the observer for Finland emphasized the importance of focusing on educational rights and incorporating a gender perspective in studies on the situation of the Roma.

62. The representative of the Roma Centre for Social Intervention and Studies (Romani Criss) indicated that in the previous few years the situation of the Roma had become an issue of intense interest in Europe. She presented information relating to the situation of the Roma in Bulgaria, Czech Republic, Slovakia, and Romania to be found in a 1999 European Commission report indicating that the Roma continued to suffer widespread discrimination and prejudice, evidenced in considerable social exclusion, and high levels of poverty, illiteracy and unemployment. Police protection was often viewed as inadequate. Access to employment in public institutions or government administrations was also viewed as inadequate. Sometimes a disproportionate number of Roma children were sent to special schools for mentally disabled children. Mention was made of some of the steps taken to improve the situation of the Roma. In some instances the steps taken were not sufficient. She suggested that many countries needed to adopt more appropriate legislative measures to comply with the requirements of international standards relating to the situation of the Roma, especially provisions of the International Convention against All Forms of Racial Discrimination.

63. At its 4th meeting, the Working Group held a joint discussion with the Central European Initiative (CEI) Working Group on Minorities, the purpose of which was to share experiences between different regional and international mechanisms dealing with minority issues. Mr. Cyörffy of Hungary, Co-Chairperson of the CEI Working Group on Minorities, explained the history of the establishment of that Working Group and the adoption of the CEI Instrument on Minorities. He pointed out that the CEI Instrument for the Protection of Minority Rights contained 27 articles, one of which was devoted entirely to the Roma. Although the instrument was open for signature, it did not require ratification and had not established a formal control or verification mechanism. Nevertheless, the main task of the CEI Working Group was to follow the implementation of the instrument in CEI member States.

64. Various questions and points were also raised in relation to the work of CEI and to the provisions of the CEI Instrument for the Protection of Minorities. Interest was expressed in the content of various articles of the CEI instrument, including its article 1, which contained a definition of a national minority, and in particular its description of members of a national minority as being "nationals" rather than "citizens" of a State. Clarification was requested by the Chairperson-Rapporteur and Mr. Kartashkin as to its precise meaning and implementation in practice. For his part, the observer for Switzerland spoke, inter alia, of the similarities between the provisions of the second paragraph of article 1 of the CEI instrument, on the definition of a national minority, and the provisions of Swiss legislation, which had been promulgated in compliance with its obligations as a party to the Council of Europe Framework Convention for the Protection of Minorities. Such provisions had ensured, for example, that Swiss of Roma and Jewish origin were encompassed within the definition of a national minority. Further details of the CEI Working Group's methods of work were requested, particularly as to whether or not the emphasis of that Working Group was on discussion of the situation of minorities in individual States. Replying to points raised, the Co-Chairperson of the CEI Working Group explained that the CEI instrument was a political one which allowed for different viewpoints with respect to the implementation of its provisions. It thus provided a basis for intergovernmental cooperation on

issues relating to national minorities and their solution. He explained that, at each of its meetings, individual members informed the CEI Working Group of the practical measures his or her country had taken to implement the provisions of the article chosen for discussion. Based on written contributions submitted by the members of the CEI Working Group, a comparative situation document was prepared and, all such documents were published. He added that the focus of its future discussions would be on matters pertaining to the Roma population as well as transfrontier cooperation, issues which were being promoted under the Stability Pact for South Eastern Europe. The Chairperson-Rapporteur observed that there were indeed different understandings of the meaning of "national" and "national minority" and that acceptance of the different viewpoints often facilitated cooperation.

65. Ms. Popescu of Romania, Co-Chairperson of the CEI Working Group on Minorities, spoke of the importance of the draft commentary to the United Nations Declaration in contributing to the clarification for the CEI Working Group of concepts of minority protection and its use. She referred to measures recently taken in the legislative and institutional fields in Romania with respect to education matters and the restitution of real estate, steps had been taken to encourage the participation of Roma in decision-making. In that context, assistance had been provided for the creation of a Working Group of Roma Associations, a member of the Sub-Commission on Roma the main goal of which was to elaborate a national strategy for the protection of Roma minorities in Romania.

66. The representative of the Hungarian Youth Forum indicated that he wished to supplement the information provided by Ms. Popescu, the Co-Chairperson of the CEI Working Group on Minorities. He spoke of his concern that the Hungarian University in Romania had still not been established and that only five citizens, all belonging to the Hungarian minority, had not benefited from the terms of the 22 December 1989 Amnesty for the suspension of certain sentences. Of the more than one thousand church properties confiscated previously, less than one per cent had been returned. The speaker also requested that the Constitutional reference to Romania as a "nation State" be withdrawn through amendment. Of special concern to the speaker was the so-called "new nationalization" of properties. Reference was made to the situation in two districts of Transylvania where the Hungarian population was in the majority and of the support to a minority religion diocese for the acquisition of properties, while properties nationalized in 1947 had still not been returned to their rightful owners. He spoke of the larger State and police presence in these areas and warned of it possibly leading to increased tensions there.

67. Mr. Zyman of Poland, a member of the CEI Working Group on Minorities, presented details of initiatives taken with a view to enhancing the participation of minorities in the decision-making process in Poland. He indicated that only one political party represented a national minority in Poland; other national minorities had not formed political parties to date but had concentrated their political activities around associations and election committees. He also said, inter alia, that election committees of registered organizations of national minorities were exempted from the obligation of reaching the election thresholds of 5 or 8 per cent of the total amount of votes in elections to the lower chamber of Parliament, the Sejm. One of the commissions of the Sejm was on national and ethnic minorities. It was currently dealing with two draft legal acts: on the rights of persons belonging to national minorities, and on the Polish

language. With respect to the question of autonomy of national minorities, he explained that it was dealt with in the framework of local self-government. He also provided details of election results and the consequent representation of national minorities at the local level.

68. The observer for the Association for Democratic and Open Society spoke about the reform of local government, education and cultural matters as they affected the situation of the Hungarian minority in Slovakia. In his view, the reorganization of local government in 1996 and the increased responsibility accorded to the local level for the funding and provision of education and culture had had a negative impact on the Hungarian minority. However, he commented favourably on the improved climate of tolerance towards minorities, on improvements in the field of education, especially in accommodating minority concerns, and on the increased financial support to minority cultural activities. The observer for the Association for Democratic Initiatives made reference to the issue of education in their mother tongue for the Albanian population in Macedonia, where children enjoyed instruction in Albanian at the primary level but not at higher educational levels.

69. Under this agenda item, Mr. Gilbert presented a paper on the jurisprudence of the European Court and Commission on Human Rights in 1999 (E/CN.4/Sub.2/AC.5/2000/CRP.1), which provided an indication of how international human rights law might be of use in protecting and promoting minority rights. No equivalent of article 27 of the International Covenant on Civil and Political Rights existed in the European Convention on Human Rights. However, unlike the Optional Protocol to the International Covenant, where only individual petitions were recognized, under article 35 of the European Convention complaints could be brought by individuals and groups. Article 14 of the European Convention contained a non-discrimination clause applicable in conjunction with other provisions. One of the grounds of discrimination mentioned was discrimination on the basis of association with a national minority. Neither the European Convention nor the European Court had defined the meaning of a "national minority". The Roma had been held to be included within its coverage. The European Court and Commission had interpreted discrimination broadly to cover not only similar groups being treated differently but also different sorts of groups being treated in the same manner. Affirmative action was not viewed as discriminatory against the majority population. The European Commission had found that article 8 of the European Convention, on the right to a private life, included a particular way of life, and had used it with respect to situations concerning indigenous peoples.

70. Mr. Gilbert provided detailed information on cases relating, inter alia, to: the registration of minority groups, which in certain States was linked to their right to recognition and property; and the protection and promotion of the identity of minorities and their members, through a broad interpretation of provisions relating to freedom of expression, including the right of a minority to express its identity freely, and of its members to self-identification. He also mentioned various cases concerned with respect for the right to effective participation in cultural, religious, social, economic and public life were also mentioned. They highlighted issues relating to the need of minorities both to protect their own identity and to participate in those State institutions affecting their cultural identity.

71. Ms. Udagama and the observers for Switzerland and Turkey recommended the preparation of papers reflecting the jurisprudence emanating from different regional human

rights mechanisms, including the Inter-American and African systems. Ms. Udagama also stressed the importance of the contribution of academics to the work of the Working Group and observed that Mr. Gilbert's paper offered an example of the achievements that were also possible in terms of minority rights protection when minority rights were not expressly included in the relevant instruments.

72. Mr. Gyula Csurgai introduced his paper (E/CN.4/Sub.2/AC.5/2000/CRP.2) on the question of whether autonomy arrangements could facilitate the peaceful and constructive solution of situations involving minorities in Central and Eastern Europe, including the Balkans. The history of the region had led to multiple ethno-cultural communities living within the same geographical area. There were "national problems" where the national identity of different ethno-cultural minority communities did not necessarily correspond to the State to which they belonged. The conflicts in the region had demonstrated that the changing of borders would not achieve a satisfactory situation, nor would the pursuit of the unitary structure of the nation-State satisfy the aspirations of minority communities. In his view, therefore, the implementation of different forms of autonomy might be a viable solution for the region.

73. No precise definition or one model of autonomy existed, Mr. Gyula Csurgai explained. Any plan for autonomy had to take account of the historical, geographical, cultural and economic features of communities and areas. Autonomy should include the necessary legal, political, institutional, economic and cultural tools to maintain and freely develop the identity of the community of individuals while respecting the territorial integrity of the State. He also understood autonomy to mean power-sharing based on both a consensus between the majority and minority or minorities and on the concept of "subsidiarity" (devolved responsibilities for decision-making). He discussed various forms of autonomy, such as territorial and personal autonomy, and their application, including jointly, according to each situation's needs. He also referred to the Seminar held in Flensburg in 1999, and its proposals regarding the political participation of minorities based on the decentralization of power and the principle of "subsidiarity" (see E/CN.4/Sub.2/AC.5/1999/WP.4). The principle of devolution of power had also been extensively addressed in the so-called Lund recommendations.

74. The Chairperson-Rapporteur expressed his view that autonomy arrangements were a form of decentralization. He also referred to the decision taken by the Working Group at its previous session that public institutions should not be based on ethnic criteria and that local government should recognize the role of multiple identities in contributing to open ethnic communities.

75. The observer for the World Federation of Hungarians referred to the Stability Pact for South Eastern Europe, the aim of which was better protection and promotion of human rights, and to efforts to ensure respect for multi-ethnic and multicultural societies in that region, especially in the Federal Republic of Yugoslavia. She presented details of the three-pillar autonomy concept proposed by the Hungarian community in Vojvodina. It consisted of a mixture of personal, cultural, regional and territorial types of autonomy, and was contained in the Agreement on the Political and Legal Frameworks of Autonomy of Vojvodina.

76. The observer for Switzerland pointed out that Mr. Csurgai's paper dealt with a right to autonomy which existed at the European level but not in international law. He suggested

replacing the word autonomy with other terms, such as self-administration or the principle of subsidiarity, a position which was shared by Mr. Sik Yuen. The observer for the Federal Union of European Nationalities argued that a firm framework for the preservation of identities was necessary in the first stages of ethnic tension, to prevent conflict; that would require compliance with the demand for local self-administration or autonomy. The Council of Europe Social Charter, the Charter for Regional or Minority Languages, and the Charter of Local Self-Government were described as useful basic instruments for the practical application of the principle of subsidiarity. The observer for the Centre for Human, Civil and Autonomy Rights referred to the mechanisms for participation of minorities and indigenous groups of the Caribbean coast of Nicaragua and suggested that the examination of such mechanisms would compensate for the overwhelming majority of European examples analysed so far.

77. Mr. Bengoa supported the view that the role played by the CEI mechanism could serve as a model for cooperation in other regions of the world and for joint meetings with other regional mechanisms in the future. With reference to Mr. Gilbert's paper on European jurisprudence, Mr. Bengoa indicated that such studies provided important information, including perceptions on how decisions were arrived at. The discussion on autonomy, in his view, was useful and a major contribution to the debate of the Working Group on the need to find political solutions to minority rights situations, especially when equally applied to all regions of the world. Mr. Cyörffy, Co-Chairperson of the CEI Working Group on Minorities, expressed appreciation for the joint meeting and noted the interest generated in the CEI and other regional mechanisms.

III. EXAMINING POSSIBLE SOLUTIONS TO PROBLEMS INVOLVING MINORITIES, INCLUDING THE PROMOTION OF MUTUAL UNDERSTANDING BETWEEN AND AMONG MINORITIES AND GOVERNMENTS

78. During the sixth session of the Working Group various suggestions for solving problems involving minorities and better protecting their rights were offered. Papers were presented on separate or integrated provision for minority rights protection and promotion, and on proposals for power-sharing and constitutional reform in Sri Lanka. Other presentations related to the Seminar on Multicultural and Intercultural Education held in Montreal, to conflict prevention in situations involving minorities and to the work of ILO and UNESCO in relation to minority issues.

A. Multicultural and intercultural education

79. Ms. Giroux, from the University of Montreal, introduced the report of the International Seminar on Intercultural and Multicultural Education held from 29 September to 2 October 1999 in Montreal, Canada (E/CN.4/Sub.2/AC.5/2000/WP.4). It had been organized by the Centre d'études sur le droit et la mondialisation and the Working Group on Minorities and had brought together approximately 60 experts, including the members of the Working Group, experts in the area of intercultural education, representatives of federal and national institutions, and representatives of academic institutions and non-governmental organizations from Canada and other countries. The aim of the seminar had been to discuss the issue of intercultural and multicultural education in the light of articles 4.3 and 4.4 of the Declaration. The participants had discussed the protection of the rights of minorities within the framework of the

United Nations, the role of intercultural education in fostering social cohesion, education in the mother tongue, the right to manage educational institutions, and the principle of non-discrimination in the area of education.

80. The conclusions and recommendations of the seminar referred to the need to reflect in educational curricula the history and culture of all groups within society, the participation of all groups in educational policy and programmes, the teaching of the mother tongue, the need for recruitment of teachers from minority communities, the integration of intercultural education into mainstream programmes of initial and continuous education of teachers, and the role of reconciliation processes through education, as well as the establishment of government working groups in Canada to develop federal and provincial policy regarding educational policy, programmes and practices.

81. Mr. Sik Yuen and Ms. Udagama and the observer for the Espacio Afroamericano spoke about inter-culturalism as a norm to which every society should aspire. Ms. Udagama suggested that the Working Group look at ways in which it could provide models and technical assistance to countries on this issue.

B. Role of United Nations bodies and specialized agencies

82. The observer for UNESCO spoke of the work of her organization regarding marginalized and excluded children and children with special needs. With regard to the former, she mentioned the World Education Conference, held in Dakar in April 2000, which had looked at the situation of groups left out of the globalization process and had redefined the purpose of education in the light of the new international developments. Within that framework, UNESCO had launched an "Education to fight exclusion project" which tried to look at new education formulas beyond the formal system. Regarding children with special needs, she referred to the basic principles adopted at the Salamanca Conference in 1994, including the principle that ordinary schools should accommodate all children and that educational policies at all levels should guarantee it. Finally, she informed the Working Group that, at the request of member States, the role of UNESCO as guardian of the tangible heritage of the world was to be extended to intangible heritage, including cultural spaces and cultural forms of expression, a development which she considered of special interest for minorities.

83. The observer for the International Labour Organization (ILO) informed the Working Group that the bases for ILO action in the field of minority rights were the ILO Declaration on Fundamental Principles and Rights at Work and respect for such international labour standards as Convention Nos. 111 on non-discrimination, 107 on migrant workers and 169 on indigenous and tribal peoples. Under the technical cooperation programme to combat child labour, two issues particularly affecting children of minorities were being addressed: children working in dangerous activities, for example, mining in South America, and women and children as victims of trafficking in Asia. As part of its contributions to the World Conference against Racism, ILO had sent a questionnaire to all its offices asking for information on activities undertaken in the field of minorities.

84. The observer for the National Movement for the Human Rights of the Afro-Colombian Communities referred to the role of the Working Group in reaching out and influencing the programmes of United Nations bodies and agencies to apply a vision of cultural diversity.

C. Conflict prevention in situations involving minorities

85. The Chairperson-Rapporteur opened the debate on conflict prevention. He said that two issues needed to be borne in mind in considering the question. In the first place, he referred to inequality, marginalization, and lack of equal treatment as matters that affected minorities. In the worst cases, minorities were subjected to ethnic cleansing and loss of their lands but they might also be discriminated against in areas such as education or in the labour market. In the second place, minorities might also be affected by the monocultural policies of those in power. In such instances, their language or religion or some other aspect of their identity might not be recognized and respected. In the face of those difficulties, minorities reacted by demanding equal treatment, sometimes reparation for past wrongs, participation in political and cultural life, the right to use their language, personal autonomy, and even a territory or separation from the State of which they formed a part. The latter claim was not, in the view of the Chairperson-Rapporteur, an issue which fell within the mandate of the Working Group. He added that consideration should be given to constructive State measures that were identified to address those concerns, such as affirmative action programmes, restitution, intercultural education and recognition. He pointed to the need to take into consideration the tensions that might exist not just between the State and the minority but between ethnic groups themselves. Finally, he recommended that a distinction be recognized between the history or origins of a conflict and its dynamics when the original cause might have long been forgotten and when violence served the interests of what he termed "conflict entrepreneurs" who were exploiting differences for their own political ends.

86. Mr. Ghebali reflected upon the causes and management of ethnic conflict. He believed there were essentially two causes of conflict. A weak or collapsing State no longer able to provide social order, justice and a degree of prosperity lost legitimacy in the eyes of affected minorities. In those circumstances, minorities looked for other solutions. The other cause he attributed to the instrumentalization of ethnic conflict. He referred to conflicts which became "ethnicized" and said that he believed that the violence in former Yugoslavia was caused by a mixture of a weak State and an ethnicized conflict. He was interested in knowing how people could be so easily mobilized and suggested that there was a strong emotional element whereby ethnic groups dehumanized groups other than their own. As far as the management of conflict was concerned, he insisted that it was important to identify the risks and look for the short-term as well as underlying causes of the conflict. He saw three stages in ethnic conflicts. The first was before violence had broken out, when intervention to strengthen the rule of law and civil society and address human rights violations might be considered. Economic development and confidence-building measures were also essential for preventing tension. The second stage, when conflict had broken out, was harder to address. In the case of non-intervention, one party dominated the other. The United Nations had a role to play in bringing both sides together, although the speaker noted that that was often difficult. The third stage was the post-conflict rehabilitation or peace-building phase, when it was necessary to introduce democratic structures and better communications between the Government and minorities with a view to eliminating

the underlying causes of conflict. He concluded by saying that managing a conflict was almost impossible and that effort should be devoted to conflict prevention. In fact the greatest challenge was to ensure early action since most of the likely conflict situations were well known.

87. Mr. Kartashkin referred to the paper on minority rights and the prevention of ethnic conflicts, prepared by Mr. Fernand de Varennes (E/CN.4/Sub.2/AC.5/2000/CRP.3) and to its comparison of sources of certain conflicts with non-compliance with provisions of the Declaration on Minorities. He suggested that the Working Group could look into some of those situations, especially those referred to in sessions of the Working Group by non-governmental organizations, minority representatives and others. He argued that the Security Council alone was the body empowered by the Charter of the United Nations to intervene in conflicts.

88. The observer for the Sikh Human Rights Group made reference to the legacy of colonialism, which had exacerbated conflict between the State and minorities. He said, for example, that in India the Constitution as well as the hierarchical and centralized form of government had led to a fear of devolution. He called for a strengthening of indigenous forms of government. He also thought that as the State grew weaker, the issue of self-determination would increase and communities would seek protection from the encroachment of transnational corporations. The observer for the Centre for Human, Civil and Autonomous Rights also considered that ethnic conflict had its origins in colonialism and spoke about a continuing process of internal colonization by independent States. She noted that stronger national political parties had led to a weakening of indigenous and local systems of community control. There was, in her view, a need for a fairer distribution of resources. The observer for the Niger Delta Human and Environmental Rescue Organization provided information about the problems faced by the Ijaw people in Nigeria upon whom the effects of oil and gas exploitation had had a negative impact. She said that, although most of the country's wealth came from that region, her people were receiving none of the benefits. She believed that the Working Group needed to consider issues relating to land and resources at a future session.

89. Mr. Potier made mention of the situation of Russian-speaking minorities. He also indicated that in studying the relationship between conflict prevention and non-compliance with minority rights, it might also be useful to analyse the ability of the State to accommodate the various demands for those rights. On the matter of the protection and promotion of Russian-speaking minorities, which had been raised by Mr. Potier, the Observer for the Russian Federation indicated that various treaty bodies and regional mechanisms had taken account of and had adopted recommendations on their situation.

90. The observer for the National Movement for the Human Rights of Afro-Colombian Communities said that a major challenge facing the Working Group was to define guidelines and approaches for the prevention of ethnic conflicts around the world and to guide United Nations agencies in developing plans to prevent situations moving from an embryonic stage of difficulties to that of conflict. He believed that the United Nations system and its agencies should not remain indifferent to the situation of minorities within given countries and should play a role not only in obtaining information, conducting research and systematically bringing to light the real causes of conflict, but also in mediation. The observer for the Uganda Land Alliance considered that conflict was generated through the power of the written and spoken

word, particularly in demonizing people and groups in society. She requested that the Working Group focus on that issue in the future, so that the problems of stereotyping and racist propaganda were tackled more systematically.

91. Mr. Hadden introduced a paper he had prepared on separate or integrative provision for the protection and promotion of minority rights. He indicated that his experience was mainly drawn from Northern Ireland, although the issues set out in his paper were applicable to similar situations where there was a need to accommodate concerns for the development of rights in divided societies and where there had been conflict over the determination of control between groups, within government structures. He explained that the approach taken in his paper required prior acceptance that a right of self-determination entailed the granting of some form of regional or functional autonomy. Focus could then be centred on the development of suitable structures, which recognized the separate identity of the minority, as well as the integration of communities' representatives into structures for governance and the provision of public services. Mr. Hadden highlighted the need to maintain a balance between development of separate structures and encouraging integration, to achieve which required the development of clear and accepted terminology that distinguished policies designed to recognize, accommodate and integrate minorities in the broader society from those designed towards assimilation. He also spoke of the need to extend principles and guidelines, such as those applicable to participation in public life developed in the so-called Lund Recommendations, to other areas of minority rights. Such underlying principles, he stated, should include authorization of positive action for integration. He referred to four areas of minority rights which would benefit from further study by the Working Group or by an international seminar, and where principles and guidelines should be developed and applied for the creation of integrative structures. Firstly, he mentioned the need to ensure that members of all communities were involved in policing the whole society and spoke of the dangers of creating separate police forces for each communal group on a territorial basis. Secondly, there was a need for integrated and bilingual education, so that members of two separate linguistic or ethnic communities could be educated together and learn of each other's history and culture. Culture was another area identified as having previously been considered through the prism of separate structures and where it might be useful to consider an integrated structure for delivering fair funding for separate communities. The fourth area identified for study was employment.

92. The Chairperson-Rapporteur indicated that the discussion of such matters were of major significance for the future work of the Working Group. Ms. Udagama also expressed her agreement with Mr. Hadden that an integrationist approach was preferable to a separatist approach to solving minority-related problems.

93. Mr. Wickramaratne introduced his paper containing proposals for power sharing and constitutional reforms in Sri Lanka (E/CN.4/Sub.2/AC.5/2000/CRP.4), which he believed, might contribute to a resolution of the conflicts in his country. He provided some background to the conflict in Sri Lanka. He also pointed to the complexity of the question, drawing attention to the concentration of a Tamil minority in two provinces, but noting that in other parts of the country they were a minority. He noted also the presence in Sri Lanka of other minority groups.

94. The challenge facing divided societies, Mr. Wickramaratne said, was to come up with arrangements to ensure that all the communities had their due share of political power. He

described the new system of government being proposed in Sri Lanka as a quasi-federal one in which the powers of government were shared between the centre and regions, with a clear-cut division of subjects and functions. He outlined the main elements of the new proposals, including details of devolved powers, constitutional safeguards and "consociational" arrangements, such as the need for parallel consent from different communities. He spoke of the lack of power-sharing arrangements between the region and the central level as a major drawback of the present proposals. That issue was now being addressed, he said, with suggestions being put forward, including the possibility of setting up a second chamber, like the Council of States in India. His conclusion was that no solution could be found in Sri Lanka if a unitary system of Government were maintained, and that there was a need to undertake a democratic restructuring to create a multi-ethnic and devolved system.

95. The Chairperson-Rapporteur thanked Mr. Wickramaratne for sharing with the Working Group the proposals made and the important points being debated in Sri Lanka on how to devolve and share power in a situation where communities were both geographically concentrated and dispersed.

IV. RECOMMENDING FURTHER MEASURES, AS APPROPRIATE, FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF PERSONS BELONGING TO NATIONAL AND ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

96. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance generated attention under this agenda item. The observer for the Swiss Federal Commission against Racism presented her working paper (E/CN.4/Sub.2/AC.5/2000/WP.6), which reflected on points of convergence between the work of national institutions, the Working Group and racial discrimination. Following a brief mention of the work of the Swiss Commission, she identified activities to be undertaken by national institutions. Such activities included: providing training for the police and customs officials, as well as political groups, including through working with the Inter-Parliamentary Union; promoting and protecting equality of access to education for various disadvantaged groups, including through provision of education in the mother tongue. She highlighted the major role the media played in strengthening the links between the majority and minority communities, and suggested that codes of conduct for media personnel could be drawn up and that the media could be requested to give greater coverage to issues concerning minorities, their rights and dignity.

97. The observer for the Swiss Federal Commission against Racism also suggested that national institutions should combat racist acts in employment, health, education and housing, by incorporating a prohibition against discriminatory practices in both criminal and civil law. They could also contribute to the creation of mediation and conciliation mechanisms, as well as ensuring an effective system of remedies and compensation for victims of discrimination. In the view of the speaker, national institutions should not only advise victims of discrimination on the legal system and inform them of their rights but also advocate the punishment of racist crimes, including with respect to racist propaganda on the Internet. In that regard, she referred to conclusions contained in the report of a seminar of experts on victims of racist acts, which had been held in Geneva in February 2000. In her view, national institutions should also encourage States to ratify various international instruments, including acceptance of article 14 of the

International Convention on All Forms of Racial Discrimination, and call upon the authorities to withdraw reservations to such standards. She stressed that effective collaboration between various United Nations mechanisms dealing with issues relating to discrimination needed to be ensured. She suggested that national institutions should invite their authorities to contribute actively to the preparations for the World Conference at the national, regional and international levels, and that they should support the accreditation to the preparatory meetings of non-governmental organizations representing minorities, and excluded indigenous people that did not have consultative status with the Economic and Social Council. Lastly, she advocated the Working Group's full participation at all levels of the Conference and its follow-up process.

98. The observer for the United States of America referred to the recommendations proposed by the observer for the Swiss Federal Commission against Racism and agreed that education was one of the most important ways to prevent and combat racism. She expressed concern about the banning of racist material on the Internet. It was not illegal to post racist propaganda on the Internet in the United States, although it could be a crime when it incited people to carry out a violent act. She considered that the banning of such information could make it more difficult for the Government to monitor groups advocating such ideas and to counter their arguments.

99. The observer for Finland expressed her full support for the proposed contributions of the Working Group and non-governmental organizations to the World Conference against Racism, as suggested in the paper under discussion. She cited the provisions of article 1 of the International Convention on the Elimination of Racial Discrimination and stated that they provided the Working Group with the basis to raise issues relating to discrimination against minorities. She appealed to the Working Group not to neglect to raise the situation of women belonging to minorities and for the implementation of the so-called Lund Recommendations on the effective participation of minorities in public life.

V. THE FUTURE ROLE OF THE WORKING GROUP

100. The Working Group discussed under this heading: (i) further restructuring of the agenda to achieve a more focused approach; (ii) themes for the next session; (iii) the question of further standard-setting, including an exploration by the Sub-Commission and the Commission on Human Rights of the desirability or otherwise of drafting a convention in this field; (iv) preparations to be undertaken for the World Conference against Racism, to be held in South Africa in September 2001; (v) the holding of regional seminars.

101. Concerning the restructuring of the agenda, the Chairperson-Rapporteur reminded participants of the discussion which had been held the previous year on the basis of a working paper on the future role of the Working Group prepared by the International Center for Ethnic Studies (E/CN.4/Sub.2/AC.5/1999/WP.9). While progress had been made, he argued that further restructuring of the agenda was required. Such restructuring would remain strictly within the mandate set by the Commission and would avoid duplication with the work of other United Nations bodies. He underlined that the Working Group was not a treaty body and had no intention to so become. Several government observers (among them those of Bangladesh, Egypt, Mexico, the Netherlands and the United States) agreed that further clarification of the focus was desirable, in line also with the review of the mechanisms now being carried out by the Commission.

102. For the restructuring of the agenda, Mr. Kartashkin suggested that the focus of the Group's work should be directed to the recommendation of measures to promote the protection of minorities, as well as the practical realization of the Declaration. On the need for the Working Group to streamline and organize its dialogue with Governments, he indicated a preference for the Working Group considering particular minority situations that were a cause of concern to the international community and, when invited, visiting specific countries or seeking information in other ways.

103. To avoid overlap and duplication, Mr. Kartashkin reiterated the recommendation made the previous year that an international seminar should be held to enable representatives of international and regional bodies to discuss matters such as coordination and non-duplication of work, to exchange information and to seek ways and means for better protection of the rights of persons belonging to minorities.

104. Concerning other themes for the next session, several proposals were made, including the question of integrative versus separatist modes of accommodating minorities, encompassing the questions of decentralization, autonomy and self-administration. At the next session the progress made in the development of databases concerning minority issues should also be assessed. Other thematic issues mentioned were the links between minority issues and paramilitary groups, population displacement and post conflict arrangements. It was suggested that the issues of multiculturalism and monoculturalism also merited further attention.

105. Mr. Kartashkin suggested that the United Nations should start to explore the desirability or otherwise of the drafting of a new convention. That would require an initiative on the part of the Commission, seeking the views on the matter of Governments, NGOs and international organizations. Several observers expressed doubts. They underlined, however, that the initiation of that process would make it necessary to solicit the views of Governments, which would have to be pursued through the Sub-Commission and the Commission.

106. Several suggestions were made regarding regional or thematic seminars to be held with the involvement of the Working Group. Mr. Bengoa and some NGO observers recommended that a seminar be held in the Latin America and Caribbean region to examine the issues facing Afro-American groups. It was also recommended that seminars should be held in Asia and Africa. Certain observers (Bangladesh, Egypt) expressed a preference for regional and other seminars being organized by the Office of the High Commissioner for Human Rights wherever possible, and for greater involvement of Governments in such meetings.

107. In regard to the World Conference against Racism, it was suggested that the Chairperson-Rapporteur should prepare for the next session a statement focusing on the relationship between racism and minority issues to be delivered to the World Conference. Other participants, including government observers (Egypt, Pakistan, Mexico), suggested that the statement should be presented to the Preparatory Committee of the World Conference.

108. The Chairperson-Rapporteur indicated that the Working Group hoped to participate in the next session of the Preparatory Committee of the World Conference against Racism, and that the statement to be prepared would take account of points raised by the observer for the Swiss Federal Commission against Racism and the discussion which had followed her statement.

VI. CONCLUSIONS AND RECOMMENDATIONS

109. On the basis of the discussion held during the sixth session, the Working Group agreed on its conclusions and recommendations for future action. They are set out below.

A. General

110. The Working Group expresses its profound thanks to participants who have prepared studies for its work and to those who have taken part in the sixth session. Many have done so at great cost to themselves or their organization. The Working Group regrets that so few resources are made available for the international efforts to protect minorities and thereby to promote the stability of States, and hopes that this can be remedied in the future.

111. The Working Group expresses its satisfaction that an increasing number of government observers are attending its sessions, and that many of them have provided information on steps taken to advance the implementation of the Declaration. It intends to advance the efforts to encourage constructive dialogue in the search for solutions to minority issues, taking into account the specific and diverse situations in the different regions of the world.

112. The Working Group expresses its appreciation of the joint meeting held with the Working Group on Minorities of the Central European Initiative, which made it possible to compare the global and the sub-regional Central European approaches to minority protection.

113. The Working Group has taken note of the many constructive recommendations made by non-governmental organizations, Governments and experts, orally and in writing. These will be taken into account in the report and as far as possible be integrated into the work-plan within the framework set out below. Further progress in this work requires continuous and intensive action throughout the year. It depends on voluntary contributions in many forms, including the preparation of working papers and the holding of seminars.

B. Decisions made at the sixth session

114. The Working Group requests its Chairperson-Rapporteur to finalize the commentary prepared by him on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, taking into account the observations made by the members of the Working Group and participants at its sixth session, and to ensure its publication in a future United Nations manual on minorities.

115. The Working Group decides to rationalize the agenda as follows. At its seventh session, three meetings will be devoted to item 3 (a) on the practical realization of the Declaration at the national level, providing opportunities for non-governmental organizations, government observers and other participants to review developments in different parts of the world, three meetings under item 3 (b) for discussion of possible solutions to minority problems, including case studies and dialogue on particular situations, and three meetings under item 3 (c) for discussion on thematic issues. The theme selected for the seventh session is more in-depth examination of the right to effective participation of minorities in the society of which they form a part. Special attention under this theme will be given to an examination of integrative and

autonomist approaches to minority protection. For that purpose, working and conference room papers should be prepared on relevant jurisprudence at the regional and global levels and on selected models of integrative and autonomist solutions. Mr. Bengoa is entrusted with the task of preparing a paper on autonomy models in the Americas, Mr. Kartashkin of ensuring that a study is prepared on the use of autonomy approaches in the Russian Federation, Mr. Eide of preparing a paper on cultural or personal autonomy. The Working Group takes note with gratitude of: the willingness of the delegation of Finland to have a study prepared on autonomy arrangements in Finland (the Aaland Islands model, the Sami cultural autonomy, etc); Mr. Hadden's offer to prepare a study on integrative approaches to minority protections; and the indications made by other experts of their willingness to prepare studies on these subjects.

116. The Working Group decides to encourage the further development of regional networks and studies regarding the implementation of the Declaration. For that purpose, it recommends that one seminar be held in the Asian and Pacific region, one in the Americas focusing, in particular, on the situation of the Afro-American minorities, and one seminar be held in Africa as a follow-up to the Arusha seminar held in May 2000. Participants should include representatives of minorities, non-governmental organizations and Governments of the region, in particular, officials with responsibility for minority issues.

117. The Working Group authorizes its Chairperson-Rapporteur to prepare a statement to be delivered at the World Conference against Racism, focusing on the relationship between the elimination of racial discrimination and the protection of minorities.

118. The Working Group requests that funding be secured to employ a person full-time in the Office of the High Commissioner for Human Rights to deal with the rights of persons belonging to minorities and, as part of that function, to service the Working Group.

119. The Working Group recommends that a voluntary fund with an independent board of trustees be established for minority issues.

120. The Working Group urges that steps be taken to ensure the implementation of the measures relating to minority issues envisaged in the High Commissioner's Appeal 2000, as soon as conditions and funds make this possible.

121. The Working Group reiterates its appeal to the High Commissioner for Human Rights to organize a seminar for representatives of global and regional organizations, treaty bodies and specialized agencies to discuss issues connected with their respective work on the protection of minorities, improve coordination so as to reduce duplication and parallel activities, exchange information and seek ways of better protecting the rights of persons belonging to minorities.

122. The Working Group recommends that the Sub-Commission recommend that the Commission request Governments and intergovernmental and non-governmental organizations to submit their views on the desirability or otherwise of the drafting of a convention on the rights of persons belonging to minorities, taking into account regional conventions on the subject, and also to give their views on the content of such a convention.

123. The Working Group decides to encourage further work on databases, as set out in paragraphs 95 to 97 of the report on its fifth session (E/CN.4/Sub.2/1999/21). Included in such databases should be information on best practices concerning minority protection.

124. The Working Group decides to continue its practice, initially established at its fourth session, of submitting information presented at its sessions by minority representatives and non-governmental organizations to Governments concerned that were not represented by observers at the session and therefore were not in a position to respond to the information presented, thus providing an opportunity for concerned Governments to provide additional information to that submitted by NGOs. Such information will be dealt with under agenda item 3 (b) at the next session.

Annex

LIST OF DOCUMENTS BEFORE THE WORKING GROUP ON MINORITIES AT ITS SIXTH SESSION

Symbol	Title
E/CN.4/Sub.2/AC.5/2000/1	Provisional agenda
E/CN.4/Sub.2/AC.5/2000/1/Add.1	Annotations to the provisional agenda
E/CN.4/Sub.2/AC.5/2000/WP.1	Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, prepared by Mr. Eide
E/CN.4/Sub.2/AC.5/2000/WP.2	Existence and recognition of minorities, working paper prepared by Mr. Bengoa
E/CN.4/Sub.2/AC.5/2000/WP.3	Report of the Seminar on Multiculturalism in Africa: Peaceful and Constructive Group Accommodation in Situations involving Minorities and Indigenous Peoples, held in Arusha, United Republic of Tanzania, 13 to 15 May 2000
E/CN.4/Sub.2/AC.5/2000/WP.4	Montreal International Seminar on Intercultural and Multicultural Education
E/CN.4/Sub.2/AC.5/2000/WP.6	Contribution of National Institutions to the World Conference against Racism: recommendations for the Working Group on Minorities, working paper prepared by Mme. Sambuc, Vice-President of the Swiss Federal Commission against Racism
E/CN.4/Sub.2/AC.5/2000/CRP.1	Jurisprudence of the European Court and Commission of Human Rights in 1999 and minority groups, conference room paper prepared by Prof. Geoff Gilbert, Department of Law and Human Rights Centre, University of Essex
E/CN.4/Sub.2/AC.5/2000/CRP.2	Proposition pour l'élaboration des régimes d'autonomie pour résoudre la question des communautés minoritaires de l'Europe centrale et balkanique, conference room paper prepared by Mr. Gyula Csurgai

Symbol	Title
E/CN.4/Sub.2/AC.5/2000/CRP.3	Minority rights and the prevention of ethnic conflicts, conference room paper prepared by Mr. Fernand de Varennes, Director, Asia-Pacific Centre for Human Rights and the Prevention of Ethnic Conflict, Perth, Australia
E/CN.4/Sub.2/AC.5/2000/CRP.4	The Sri Lankan Government's proposals for power-sharing, conference room paper prepared by Mr. Jayampathy Wickramaratne, Attorney at law, Consultant, Ministry of Justice, Constitutional Affairs, Ethnic Affairs and National Integration, Sri Lanka
E/CN.4/Sub.2/1998/18	Report of the Working Group on Minorities on its fourth session, Geneva, 25-29 May 1998
E/CN.4/Sub.2/1999/21	Report of the Working Group on Minorities on its fifth session, Geneva, 25-31 May 1999

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PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES

The human rights problems and protections of the Roma

Working paper prepared by Mr. Y.K.J. Yeung Sik Yuen
pursuant to Sub-Commission decision 1999/109

CONTENTS

		Paragraphs	Page
	Introduction	1 - 8	2
I.	HISTORICAL BACKGROUND	9 - 15	3
II.	HUMAN RIGHTS PROBLEMS OF THE ROMA	16 - 30	5
	A. Racism and violence	19 - 22	6
	B. Socio-economic problems	23 - 30	6
III.	HUMAN RIGHTS PROTECTION OF THE ROMA	31 - 39	8
IV.	RECOURSE TO REGIONAL AND INTERNATIONAL ORGANIZATIONS FOR THE PROTECTION OF HUMAN RIGHTS	40 - 44	10
V.	FEASIBILITY STUDY	45 - 49	12

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Introduction

1. At its fifty-first session, the Sub-Commission on the Promotion and Protection of Human Rights decided to entrust me with the task of preparing a working paper, without financial implications, on the human rights problems and protections of the Roma in order to enable the Sub-Commission to take a decision on the feasibility of a study on the subject (decision 1999/109).

2. Mr. David Weissbrodt had earlier, during that same session, made a statement on the situation of the Roma, adding that there had been no systematic United Nations effort to understand the situation of the Roma minority within Europe and that there had not been a thorough study addressing the ways in which people of Roma ethnicity had suffered discrimination and of ways to improve their situation. That statement could not be more factually correct since the first reference to the Roma by a United Nations organ is a fleeting one. In resolution 6 (XXX) of 31 August 1977, the Sub-Commission, "noting that the report of the Special Rapporteur on the rights of persons belonging to ethnic, religious and linguistic minorities, Mr. Francesco Capotorti, found (E/CN.4/Sub.2/384/Add.6, annex III) that there are gypsies (Roma) within the borders of many countries ... appeal[ed] to those countries which have gypsies (Roma) within their borders to accord to these people, if they have not yet done so, all the rights that are enjoyed by the rest of the population".

3. On 23 November 1984, the General Assembly adopted resolution 39/16 on the Second Decade to Combat Racism and Racial Discrimination in which it invited the "concerned organs of the United Nations" including the Sub-Commission, "to continue exercising vigilance in identifying actual or emergent situations of racism or racial discrimination, to draw attention to them where discovered and to suggest appropriate remedial measures". Specific reference was made of apartheid in South Africa and Namibia in the resolution.

4. Various organs and bodies of the United Nations have been continuously involved with combating racism and racial discrimination. But there was no reference to the Roma until another resolution of the Sub-Commission in 1991, resolution 1991/21, expressed its awareness that "in many countries, various obstacles exist to the full realization by persons belonging to the Roma community of their civil, political, economic, social and cultural rights and that such obstacles constitute discrimination directed specifically against that community, rendering it particularly vulnerable". In its resolution 1992/65, entitled "Protection of Roma (gypsies)", the Commission urged the Special Rapporteur on minorities of the Sub-Commission, in carrying out his work, to accord special attention to and to provide information on the specific conditions in which the Roma communities live. But the study of the problems of the Roma was to be peripheral to the broader task of preparing a study on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities; the time was probably not yet ripe.

5. In March 1993 the Office of the United Nations High Commissioner for Refugees (UNHCR) carried out a survey of the Roma in Central and Eastern Europe (CEE). This followed the attack on a hostel housing Roma asylum-seekers in Rostock, Germany, in August 1992. The writer, at paragraph 3 of the Preface, found that:

> "The Roma, perhaps more than any other identifiable transnational group of people, are subject to three main aspects of contemporary Central and Eastern European life that are giving rise to what may become one of the greatest destabilizing factors in Europe since the 1920s and 1930s. These are: increasing economic deprivation, increasing social instability, and the surfacing of long-suppressed ethnic hostilities, now fuelled by the 'skinhead' syndrome that has made its way from Western Europe."[1]

The survey covered the background and the contemporary condition of the Roma in five CEE countries, and Roma asylum-seekers in Germany. Its purpose was mainly informative.

6. The Committee on the Elimination of Racial Discrimination (CERD) has been playing an important role in the protection of the human rights of the Roma. In March 1998, for example, it considered the initial and second periodic reports of the Government of the Czech Republic presented in one document (CERD/C/289/Add.1). It found multiple areas of concern and formulated a number of recommendations (see A/53/18, paras. 111-138). CERD has recently decided to hold a day of discussion on the issue of the Roma at its August session this year.

7. In September 1999, pursuant to Commission on Human Rights resolutions 1993/20 of 2 March 1993 and 1999/78 of 28 April 1999 (section III), the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Special Rapporteur on racism) carried out a mission to Hungary, the Czech Republic and Romania. His mission was prompted by reports he had received of systematic discrimination (particularly in education, employment and housing) against the Roma citizens of these countries and frequent acts of violence against them by members of extreme-right organizations and the police. The report of his mission (E/CN.4/2000/16/Add.1) was submitted to the Commission at its fifty-sixth session this year.

8. The call for a working paper by the Sub-Commission on the specific issue of the human rights problems and protections of the Roma is therefore an appropriate and timely action in view of the flood of interest in the matter demonstrated recently by a number of United Nations bodies.

I. HISTORICAL BACKGROUND

9. The Roma originate from the north-west of India, whence they travelled several centuries ago. The largest population of Roma is at present to be found in the CEE. Statistics on the Roma are difficult to gather, and where these exist they are unreliable. Quite a few Roma still lead a nomadic lifestyle and there is reason to believe that some appreciable number of them, for a number of reasons, have declared themselves to the authorities as other than Roma.

10. To start with, their Indian origin had over the years been obscured by legends of Egyptian origin and when they reached Greece many centuries ago they were wrongly lumped together with the Atsinganos, meaning "untouched or untouchable", who were a sect of soothsayers and magicians from Asia Minor. (The word "gypsies" is a corrupted form for "Egyptian" and Tsigane derives from Atsinganos.) But the Roma are clearly of Indian origin, as confirmed by linguists who found in the Romani language unmistakable similarities with Sanskrit. There are many designations for the Roma, including Gypsy, Tsigane, Zigeuner, Gygan and Chicane.

11. Another reason for the unreliability of statistics on the Roma is the fact that some Roma may declare themselves as belonging to other communities within the society in which they live, out of prudent caution, since they know that Roma are not liked and are discriminated against. There is also the lingering memory of the Roma who were exterminated by the Nazis during the Second World War. The inaccuracy of statistics is further augmented by the way the census is carried out in some countries where individuals are asked to state in which community they would prefer to be classified. In other countries, it is not obligatory for individuals to declare their ethnic group. In the Czech Republic, for example, only 33,000 people declared themselves as Roma in the 1991 census. When the Special Rapporteur on racism inquired last September, the official estimates gave the number of Roma as ranging between 166,000 and 206,000. Unofficial sources would put the Roma population in the Czech Republic at between 300,000 and 400,000.

12. There is perhaps need to mention the existence of other groups leading a nomadic lifestyle but of indigenous European origin, i.e. the Tinkers in Ireland, the Quinquis in Spain and the Jenisch in Germany. There are also the Sinti, who are Roma by ethnicity but who have settled down in Germany and who barely speak Romani nowadays and have a diluted culture. There are also the equivalent of the Sinti in France, known as the Manouche. These groups are in between the Roma and the Gadjé, the appellation by which non-Roma are known. They would all form part of the group Roma, Gypsies and Travellers, of which the Roma would make up some 70 per cent.

13. It is difficult to ascertain the relative proportions of nomad and sedentary Roma. The situation varies from State to State. In Sweden, Denmark, Spain and Austria the Roma are virtually all sedentary. In the United Kingdom, France, Ireland and Belgium the situation is just the reverse and virtually all the Roma in those countries are nomadic. Taking Europe as a whole, the population of Roma living full time in mobile accommodation and regularly on the move is no higher than 20 per cent. Semi-nomads, either living full-time in mobile accommodation but travelling only part of the year, or living part of the year in fixed accommodation and travelling the other part, amount to another 20 per cent. Sedentary individuals who never travel, despite the fact that many of them live in semi-mobile accommodation, make up the remaining 60 per cent. In his book Roma, tsiganes, voyageurs (Roma, Gypsies, Travellers) Jean-Pierre Liégeois,[2] a well-known authority on Roma issues who is also the director of the Gypsy Research Centre, put the Roma population in 1994 in 38 listed European countries between 7 and 8.5 million. The figure has now increased to between 8 and 10 million.[3]

14. There is perhaps also a need to get some terminology right. "Rom" is the singular of "Roma", the plural form which will be adopted in this working paper. Rom and Roma refer to the persons. "Romani", on the other hand, refers to the language spoken by the Roma, a tongue originating in India.

15. The problems of the Roma are numerous and multifarious. The Roma are one of the rare migrant populations for whom time seems not to have meant progress with respect to their advancement in terms of social status, which has not changed over the years, not to say centuries. Scarcely anything has been achieved and today Roma across the whole of Europe are still

generally poor, uneducated, discriminated against in practically every sphere of activity. They are frequently subjected to persecution and are the victims of open acts of racism. Many of them live in constant fear of violence being perpetrated against them because they are Roma.

II. HUMAN RIGHTS PROBLEMS OF THE ROMA

16. In September 1993, at the meeting of the Committee of Senior Officials of the then Conference on Security and Cooperation in Europe (CSCE), the High Commissioner on National Minorities of that organization, Max van der Stoel, reported on "the extremely vulnerable position in the societies, economies and political systems of the region" of the Roma which has manifested itself in their widespread and acute poverty, unemployment, illiteracy, lack of formal education, substandard housing, and other problems. He noted that there was persistent anti-Roma prejudice and that Roma were frequently targeted as scapegoats for the ills of society at large, resulting in numerous attacks against Roma and their property.

17. In an address in September 1999 to the Supplementary Human Dimension Meeting on Roma and Sinti Issues in Vienna, Mr. van der Stoel, now High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe (OSCE), mentioned the terrible plight of the Roma:

> "For too long the Roma issue has been swept under the carpet. But no one who lives in this part of the world can be unaware of the problems, or at least the symptoms. The problems include intolerance, mutual distrust, poor housing, exclusion, unemployment, education and systemic discrimination. In a classic downward spiral, each of these problems exacerbates the others. Sadly, the symptoms have become almost commonplace: racist attacks and segregation, Roma asylum-seekers, horrendous living conditions, extreme poverty, and disproportionately high rates of illiteracy and ill-health including infant mortality. Images of a mother and child begging in the streets, of families reduced to living on garbage dumps, or Roma houses being burnt down by angry mobs do not tell the whole story, but they stay with us because of their poignancy. Such images seem like they should be from another time or place. But they occur - here and now ... in modern Europe, in a Europe that prides itself on being a civilized continent based on common principles, particularly respect for human rights."

He found that "notwithstanding notable steps by a few institutions, conditions of Roma communities in Europe have, in many key respects, continued to deteriorate" and that "despite the seriousness of the problems now confronting Roma, neither the OSCE nor its participating States have devoted the attention or resources to this issue that are plainly warranted".

18. For the purposes of this working paper, there is no need to go into the many individual types of infringements of human rights which the High Commissioner on National Minorities has enumerated. Suffice it to say that the human rights problems of the Roma are not limited to the infringement of the rights of minorities, i.e. discrimination on the grounds of culture, language and race, but that, as a group, they are subjected to violations of all known human

rights. They basically face two types of problems, which overlap. The first concerns racism and violence and the second is of a socio-economic nature. The few specific problems which will be mentioned here are only for the purpose of illustrating the seriousness and complexity of the problems facing the Roma.

A. Racism and violence

19. There has been a marked resurgence of late of racist violence throughout Europe. One reason is the great compression in employment and job opportunities in CEE countries following the fall of communism and the adoption of a market economy. This has resulted in a marked competition for scarce jobs, especially those requiring no particular skills, which the majority of the Roma find themselves seeking. The mainstream population, which is in direct competition with the Roma, therefore finds it easy to single out the Roma as the perfect scapegoat for the morass in which they find themselves plunged.

20. The media has often played a harmful role by stereotyping Roma. They are often described in terms of negative characteristics, the worst of which is a supposed predisposition to commit crimes. Hate messages in the press are not uncommon.

21. The authorities which are supposed to offer protection, like the police and the judiciary, are often perceived as shying away from their responsibilities because they are prejudiced and do not take Roma complaints seriously.

22. The Roma are often barred from restaurants, swimming pools and discotheques and they are often the victims of violent racist acts by skinheads, a new phenomenon in the East and a bad influence from the West. For security reasons many of them have sought asylum in other countries. This has in turn led to reactions from certain receiving countries, including arbitrary imposition of visa requirements and sometimes even deportation in situations where the fate of the asylum-seekers in the country of origin was uncertain. In 1994 the Roma were persecuted by the Serbs during the hostilities in Bosnia. Last year, and even now, they suffer hostilities from the ethnic Albanians in Kosovo because some of them had allegedly sided with the ethnic Serbs prior to the intervention by the North Altantic Treaty Organization.

B. Socio-economic problems

23. The Roma suffer mass discrimination in their social and economic life. This is very strongly reflected in the latest and voluminous report of the OSCE, published in March this year.[4]

1. Housing

24. Most Roma still live in the most squalid and derelict housing estates with non-existing or extremely poor sanitary facilities. Often they live in Roma-only sectors, thereby bringing about an effective segregation or ghettoization from the mainstream population. The building of the notorious wall in the Czech town of Usti nad Labem is a single but vivid example of such ghettoization in all its shocking reality. Whilst it cannot be denied that the municipal authorities of that town might have had some genuine cause for concern or could have taken reasonable

action to eliminate the noise and visual pollution coming from the two blocks of flats which were a source of inconvenience to the non-Roma neighbourhood, the proposal to build a wall to separate and segregate the two communities was most disquieting since it amounted to an affront to human dignity and was a clear breach of the principle of equality of individuals before the law. The building of the wall therefore went beyond all common sense and it is reassuring that the Government of the Czech Republic took urgent measures to redress the situation by ordering the destruction of the wall shortly after it had been built.

2. Education

25. There are reports that in certain countries Roma children are systematically routed to "special schools" for the mentally disabled, thereby depriving them of their chance to progress at school and beyond. Some government agencies have claimed that certain Roma parents prefer to send their children to such schools because the latter have difficulty coping with the normal school curriculum. It is also said that Roma children are usually breastfed till they are 6 or 7 years old and thus have barely been exposed to mainstream influence, including language, when they start their schooling. Significantly, the ratio of Roma to non-Roma children attending special schools in the Czech Republic is 1:11. One thing is sure, however: it does a grave disservice to the community as a whole to channel Roma children as a matter of course to "special schools". This is a way of stunting them intellectually so that they are deprived of an equal and fair chance of getting a proper education and of ensuring that they remain second-class citizens for ever.

26. A report[5] published in 1989 under the aegis of the European Communities stated that only 30-40 per cent of Roma children attended school with a degree of regularity. Over half received no schooling at all. Very few progressed to secondary level and scholastic achievement with regard to the attainment of functional literacy was generally poor and was not in keeping with the amount of time spent in school. The recent OSCE report gives the same bleak picture of the low levels of school attendance by Roma children and high levels of illiteracy. Pertinent statistics on their schooling in a number of countries are contained in the report.[6]

3. Employment

27. One of the most flagrant types of discrimination against the Roma is their massive denial of employment security. Quite apart from the competition for scarce jobs in CEE countries, the Roma are practically absent from the service sector. The Special Rapporteur on racism found that in Hungary, for example, "there are almost no Roma taxi-drivers, shop assistants, kitchen workers in pubs and restaurants, or doormen at banks or hotels. Roma are employed as garbage-collectors, street-sweepers or factory workers. The vast majority, however, are unemployed. The unemployment rate among Roma is estimated at 60 per cent; outside relatively prosperous Budapest, areas with nearly 100 per cent unemployment among Roma are not uncommon, according to several sources" (E/CN.4/2000/16/Add.1, para. 114). Unemployment figures for the Roma in other countries of the region follow the same pattern. In its 1997 report, the Council of Nationalities in the Czech Republic stated that 70 per cent of Roma were unemployed, with figures as high as 90 per cent in some areas. The general unemployment rate in that country, however, is only 5 per cent (ibid., para. 14).

4. Complaints

28. One common complaint of the Roma in all CEE countries is that no consideration is given to their plight and that when Government thinks of doing something to promote their interests they are not asked to give their views or to be involved. Measures taken by Government, although done in good faith, often present themselves as impositions or faits accomplis.

29. Another complaint is that they have little or no say at the political level since they are usually unrepresented or under-represented at the local, central or regional levels of Government. In the former Yugoslav Republic of Macedonia, for example, the only Roma elected to Parliament comes from a constituency with a predominantly Roma population. Ways and means of ensuring adequate representation of the Roma at all levels of Government must obviously be looked into.

5. The gender issue

30. It is a well-known fact that whenever the human rights of a group are trampled upon, the children and women bear the brunt of such abuse. They become, in fact, the victims of double discrimination. There have unfortunately been reports from Roma NGOs of sexual violence and also of forced sterilization suffered by Roma women. Moreover, there is information that young Roma women are lured or forced into prostitution, ending up as subjects of international trafficking. Particular attention should therefore be paid to their situation and national strategies in favour of the Roma should include a specific action plan for women.

III. HUMAN RIGHTS PROTECTION OF THE ROMA

31. The overall objective we are seeking to establish is the protection of the human rights of the Roma so that they can enjoy all human rights and in particular those set out in the international and regional instruments for the protection of the rights of the minorities which are encapsulated in the text of article 27 of the International Covenant on Civil and Political Rights. To achieve this objective several things must emanate from different quarters. The key element in the effective improvement and protection of the human rights of the Roma is the establishment of trust among all the parties, viz. the Roma, the mainstream communities and Government. We are here proposing a solution in which all parties will profit.

32. Both Government and the mainstream communities are in a dominant position vis-à-vis the Roma who are but a minority component in the various societies they may find themselves living in. It is incumbent therefore upon those who have the edge and the power to bring about social and economic reforms to cater for the needs of the Roma and to reinforce their dignity. The following should be borne in mind:

(a) A move in that direction can be achieved by establishing and maintaining strong lines of communication between all parties through newly established independent agencies dedicated to the promotion and protection of the human rights of the Roma and consisting of persons of good will and repute from all ethnic backgrounds, including Roma;

(b) Issues relating to the Roma ought to be discussed with the Roma and their sensitivities taken into account when decisions are taken that concern them. Discussions should be proactive and the Roma should not be made to feel, nor should the dominant parties behave, as if one side is granting privileges and that it is a "take it or leave it" situation. There is a need to profess and to practise mutual respect.

33. It is important to check hate speech and racial discrimination in all its forms from mainstream populations and particularly from chauvinistic politicians. Specifically designed provisions in municipal laws to combat racism, including provisions in the administrative, criminal and civil laws, which have sufficiently sharp teeth have become a real necessity. It is only when the Administration has the necessary power to deregulate or to cancel licences of errant businessmen who blatantly practise discrimination, when State prosecutors secure convictions against offenders guilty of racially motivated violence, or when victims obtain compensation for the prejudice suffered as a result of discriminatory acts that the message will seep through that it does not pay to be a racist. It is essential that an honest and unbiased police force as well as a strong and independent judiciary be set up. They need to be trained and well informed so that they can act fairly and impartially in dealing with complaints or hearing court cases in which the Roma are involved.

34. It is the role of education to bring about equal opportunities for all individuals regardless of their ethnicity, culture or religion. More importantly, education opens up one's mind and one's horizons by stimulating interest in cultural pluralism. One can hardly speak of monoculturalism in any specific country nowadays since no single country in the world can remain immune from the influence of a second or more cultures. Multiculturalism has become the norm and those Powers which, at a certain time in their history, felt so effortlessly superior vis-à-vis the others that they took as their credo that only their culture was worth disseminating across the world, have fortunately come to realize that there is often merit, at least occasionally, in humility. Nowadays, allowance is made for minority ethnic groups to practise their own culture. Multiculturalism is a manifestation of tolerance, which is good but which may not be enough.

35. The new paradigm is perhaps to be found in "interculturalism", which allows an individual to be open and receptive to the simultaneous influence of several cultures, although these may be poles apart. Interculturalism goes a step further than tolerance. It implies openness and receptiveness to cultures other than one's own, whether one belongs to a minority or to the majority. It enhances and gives extra points of reference to the individual whose identity is enriched by acquiring multiple identities so that he/she is reasonably comfortable with ethnically different neighbours and sufficiently understands them. An individual who lives in a multicultural society and is open to the practice of interculturalism will have less difficulty in being socially integrated. Interculturalism is the precept for becoming a real citizen of the world.

36. J.S. Gundara of the University of London, in his paper "Multiculturalism, Deep Democracy and Citizen Education",[7] gives some positive examples of that concept at work in Britain. Writing about certain Indians who have settled in Britain, he says:

> "One Das ... describes himself as a 'Hindi British Asian, English, Bengali European'. One Pandit G ... describes himself as 'a half-Irish, Asian, Scot' (The Times, 2 July 1999)."

37. School is the ideal medium to promote interculturalism and empowerment must necessarily come through education. That power lies in the barrel of a gun is long-gone rhetoric which has no relevance to the ideals of government based on democracy and human rights. Power is based on knowledge and there cannot be knowledge without education. Nowadays, satellite TV keeps the Roma sharp and well informed. Their expectations are higher and they are no longer willing to play an uncomplaining role in society which very much resembles serfdom.

38. Establishing trust is not a one-way street and there is grave need for reciprocity from the Roma. There is urgent need for the Roma to be perceived as paying particular attention to and showing respect for the laws and customs of the country they may find themselves living in, albeit in transit, when those laws and practices are in conformity with the provisions and principles of international human rights law. Criticism must be fair. For example, non-recognition of a "marriage" which does not comply with the requirements of a civil marriage, viz. the need for publication and registration, is not aimed at barring a Roma "widow" who has celebrated a purely "religious" marriage from lawfully obtaining pension benefits. Non-recognition of a purely religious marriage can be a very sensitive issue because it involves a clash between the obligation of the State to ensure that its domestic law complies with articles 1 and 3 of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and the feelings of people who basically believe in the sanctity of a religious marriage. A simple solution would be to introduce legislation empowering "authorized persons" (Roma religious leaders and priests) to perform religious marriages having civil effect. Such "authorized persons" will be bound to ensure that every marriage they perform is in compliance with the civil law and that the particulars of the marriage are transmitted to those responsible for the civil register.

39. Race relations are often affected by negative stereotyping, and relations between "mainstream" communities and Roma are no exception, where there is a strong perception that Roma leading an itinerant lifestyle do not leave temporary living sites in a tidy or clean state. There is also urgent need for the Roma who have adopted a sedentary lifestyle to integrate themselves (as opposed to assimilate) in their country of adoption. This will only reinforce trust.

IV. RECOURSE TO REGIONAL AND INTERNATIONAL ORGANIZATIONS FOR THE PROTECTION OF HUMAN RIGHTS

40. Protective measures and machinery exist in various international and regional instruments. In the present context of world affairs those instruments may contain the best practical measures for the promotion and protection of human rights. First, conventions are instruments of consensus and whilst the benchmark must be set high, it must not be placed beyond the practical bounds acceptable to States parties. Any recommendation for the improvement of the human rights protections usually bears in mind this practical constraint and is normally worked out around any existing legal framework. Second, the availability of these protective measures and machinery at a level which is beyond national confines is perceived as offering the necessary guarantees of objectivity and independence. This is an important safety

valve, especially when local protective measures like the police and the judiciary are often considered, rightly or wrongly, as working hand in glove with the majority to stamp down the minorities. Access to justice may also be more theoretical than real since the facilities available to the litigants can be highly disproportionate. Although the independence of the judiciary is often easily presumed, that presumption is not an irrefutable one.

41. In extreme situations where there is much bitterness between two communities it may be utopic and unrealistic to expect that a judge belonging to one community would not be infected by prejudice when he sits in judgement against a member of the other community. In an interview he gave recently,[8] Dr. Bernard Kouchner, who heads the United Nations mission in Kosovo, was asked whether it was possible to have fair trials given the ethnic animosity. His candid answer was that the judicial system was not functioning because it did not have sufficient independent judges and prosecutors. Talking about the divided city of Mitrovica, he said that he had postponed the trial of alleged Serb war criminals there because the situation was too volatile. This diagnosis by Dr. Kouchner highlights the importance of having sound, independent and respected institutions to solve disputes.

42. The Roma have had very little recourse so far to regional and international organizations for the protection of their human rights although these organizations are a guarantee of independence and objectivity. Most of the Roma may not know the existing avenues or they may not have the material resources or legal contacts and back-up necessary to bring such cases before the available forums. This is a pity because social change litigation, including race discrimination litigation, is a sure way of exerting pressure on Governments and often act as a catalyst in bringing about a cascade of positive remedial actions.

43. There is therefore an urgent need:

(a) To undertake an information and sensitization campaign to inform the Roma of the remedies available to them beyond the boundaries of the States in which they live;

(b) To carry out a study on the effectiveness of the protective measures obtainable before regional and international organs and the means that must be taken to ensure an enhanced protection network. The common requirement that all existing domestic remedies must be exhausted before citing a State party before an international forum may result in injustice where no time-frame is set for hearing complaints of violation of human rights;

(c) To take advantage of the new willingness on the part of certain countries to solve the Roma's problems. As at June 1999, of the 41 countries of the Council of Europe, 27 had ratified the Framework Convention for the Protections of National Minorities which is a very important regional instrument for the protection of minorities. That document came into force on 1 February 1998. One of the reasons behind this desire to improve human rights protections for minorities is probably linked with the negotiations for membership in the European Union which certain countries are at present undertaking, and the need to raise human rights standards to bring them into line with the international norms.

44. The machinery available under various regional and international instruments for the protection of human rights are good tools for checking violations of the human rights of minorities and it is essential that maximal use be made of and benefits drawn from them.

V. FEASIBILITY STUDY

45. Considering the magnitude and complexity of Roma human rights problems there is a need to initiate a study to identify the reasons why, unlike other minorities who integrate successfully in the countries of their choice, the problems of the Roma are recurrent in spite of the fact that they have been living for several generations within the same countries.

46. There is a need to identify the countries where the human rights problems of the Roma are the most glaring, the main areas of the problems, the causes, the measures taken or which can be envisaged to solve them, the comparative experiences of other countries, and the possibilities which are open to achieve the protection of the human rights of the Roma, either through integration or some form of internal autonomy based on consensus. The question of ensuring the participation of the Roma in decision-making and in the public and political life of the countries in which they are residing or of which they are citizens is important. Measures taken in Hungary since 1995, and in other countries, with regard to the empowerment of the Roma through the creation of National Minority Self Governments or similar measures deserve close study. That there are dispersed or concentrated populations of Roma living in different areas of certain States is a reality, but the needs of settled communities of Roma and of those leading a nomadic lifestyle are often different. A well-thought-out plan of autonomy, agreed to by civil society, may, where appropriate, be understood to offer better protection of the rights of both majority and minority populations, especially the Roma. However, any proposal for autonomy must take account of the particular characteristics of the area concerned and of its populations, and its acceptance by minority and majority populations is crucial. One interesting example of autonomy brought to the attention of the author relates to that proposed by communities in Vojvodina.

47. There is need to call for evidence regarding the human rights situation of the Roma outside Europe as well. How they are faring in the Americas (both North and South), in Australia and - why not - in India, where there were apparently certain problems relating to the citizenship of the Banjara Gypsies who had settled in Rajasthan and which were discussed at the Delhi Forum on Banjara Gypsies.

48. There is need to draw up a comprehensive list of recommendations which can help to solve the human rights problems of the Roma.

49. Last but not least, the study will provide an opportunity for all parties involved with the human rights problems of the Roma to focus not only on their problems but also on fruitful measures which can be taken to solve them.

Notes

[1] Mark Braham, The Untouchables: A Survey of the Roma People of Central and Eastern Europe, report to UNHCR, March 1993.

[2] Council of Europe Press, 1994.

[3] Secretariat of the Council of Europe, "The Council of Europe and the Roma/Gypsies", August 1999.

[4] Report on the situation of the Roma and Sinti in the OSCE area, The Hague, March 2000 (hereafter "OSCE report").

[5] "School provision for Gypsy and Traveller children", a report on the implementation of measures envisaged in the resolution of the Council and of the Ministers of Education meeting with the Council, 22 May 1989 (89/C 153/02).

[6] OSCE report, supra note 5, p. 67.

[7] Paper presented at a seminar held in Mauritius, 3-5 November 1999, entitled "Vivre et penser l'inter-culturel aujourd'hui".

[8] Newsweek, 15 May 1999.

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